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SENATE

REPORT
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NATURAL GAS UTILIZATION ACT OF 1987

MARCH 31 (legislative day, MARCH 30), 1987.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 85]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 85) to amend the Powerplant and Industrial Fuel Use Act of 1978 to repeal the end use constraints on natural gas, and to amend the Natural Gas Policy Act of 1978 to repeal the incremental pricing requirements, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 85 is to amend the Powerplant and Industrial Fuel Use Act of 1978 ("FUA") (Public Law 95-620) to repeal the end use constraints on natural gas, and to amend the Natural Gas Policy Act of 1978 ("NGPA") (Public Law 95-621) to repeal the incremental pricing requirements.

SUMMARY OF MAJOR PROVISIONS

The bill would amend the Powerplant and Industrial Fuel Use Act of 1978 ("FUA") in several respects. First, it would repeal FUA's prohibition on the use of natural gas or petroleum in new electric powerplants or in new large industrial boiler facilities. Second, it would amend the FUA requirement that all new electric powerplants be capable of using coal or another alternate fuel; it

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would substitute a requirement that new baseload powerplants have the design capability to be converted after they are constructed from natural gas or oil to coal, or another alternate fuel, as market conditions warrant. In addition, there are numerous other provisions repealing restrictions on the use of natural gas or petroleum.

The bill would also amend the Natural Gas Policy Act of 1978 ("NGPA") to repeal the incremental pricing requirements of title II.

Background and Need

POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978

The Powerplant and Industrial Fuel Use Act of 1978 ("FUA") is one of five parts of the National Energy Act. FUA extended the policies of the Energy Supply and Environmental Coordination Act of 1974 ("ESECA") (Public Law 93-319), to new electric powerplants and major industrial installations. The earlier statute emphasized conversion of existing coal capable facilities. FUA was enacted following severe shortages of natural gas in the interstate market in the winter of 1976-1977. At the time, Congress sought to reduce oil imports, and to conserve natural gas and oil for uses other than electric utility generation or commercial generation of steam.

In order to achieve its purposes, FUA prohibits new electric powerplants and new major fuel-burning installations ("MFBI's" a term which includes large industrial boilers, turbines, and engines) from using natural gas or petroleum as a primary energy source. The FUA also requires new powerplants to be constructed so as to be capable of using coal, or another alternate fuel, as a primary energy source. Those wishing to build a new powerplant or new MFBI that is not capable of using coal or another alternate fuel can file a petition with the Secretary seeking an exemption.

Three types of permanent exemptions have been widely sought and granted. They are exemptions for (1) cogeneration facilities (38 in 1985 and 34 in 1986); (2) peakload facilities (36 in 1985 and 39 in 1986); and (3) lack of an alternate fuel at a price not exceeding the cost of imported petroleum (7 in 1985 and 53 in 1986). Significantly, for the first time, one of the alternate fuel exemption petitions filed in 1985 was for a baseload powerplant; five baseload powerplant exemption petitions were filed in 1986. All petitions are for gas fired combined-cycle facilities.

FUA also includes "coal conversion" provisions that allow the Secretary of Energy to order an existing powerplant, or an existing MFBI, to convert from oil or natural gas to coal. He does so by issuing a prohibition order; being issued such an order enables the powerplant or MFBI to convert to coal without being required to meet the new source performance standards under the Clean Air Act.

FUA also gives the Secretary of Energy authority to prohibit the use of natural gas in certain boilers used for space heating; prohibited the use of natural gas for decorative outdoor lighting; limits increased uses of petroleum by existing powerplants; and includes numerous miscellaneous reporting and technical provisions.

OMNIBUS BUDGET RECONCILIATION ACT OF 1981

Several amendments were made to the FUA as part of the Omnibus Budget Reconciliation Act of 1981 ("OBRA") (Public Law 97-35). FUA prohibited existing electric powerplants from using natural gas as a primary source of energy after January 1, 1990. That provision, known as the "off-gas" provision, was repealed by OBRA.

The coal conversion provisions affecting certain existing facilities were also amended in 1981. Prior to 1981, the Secretary could—and did—issue coal conversion orders to installations whose owners did not wish to convert to coal. In such instances lengthy administrative and legal proceedings resulted. The OBRA amendments substituted a "self-certification" program. It requires powerplant owners or operators wishing to be ordered to convert to certify that the facility was capable of using coal and limited the Secretary's authority to issue conversion orders in only those instances where they have self-certified their ability to convert to coal. There are currently 31 coal conversion orders covering 68 individual units in effect, according to the Department of Energy's ("DOE") *Annual Report to Congress,* dated March 1, 1987.

OBRA also amended the prohibition on the use of natural gas for decorative outdoor lighting. It did so by a "grandfather" clause that allowed residential outdoor lighting fixtures built before FUA was enacted to continue to use natural gas. OBRA also imposed a new requirement on utilities which own or operate existing electric powerplants that use natural gas as a primary energy source. They were required to submit conservation plans to DOE. The plans were to provide for the conservation of electric energy over a 5-year period at a level equal to 10 percent of a utility's electric energy output attributable to natural gas sold in a base year. According to DOE's FUA *Annual Report to Congress,* dated March 1, 1987, the 10-percent conservation goal is being exceeded. Approximately 437 billion kilowatt hours over a 5-year period should be saved. This would be approximately 190 percent of the targeted goal.

INCREMENTAL PRICING UNDER THE NATURAL GAS POLICY ACT OF 1978

Title II of the NGAP provides for incemental pricing of natural gas. It requires FERC to impose a surcharge on natural gas purchase costs for certain boiler fuel users of natural gas served by interstate pipelines. The surcharge is in effect until those users' gas costs reach the price of their alternate fuel.

The incremental pricing program was meant to be a transition mechanism. It was designed to shield high-priority natural gas users from short-term price increases resulting from the NGPA and to make pipelines more sensitive to natural gas acquisition costs than they had been. Today it is a cumbersome program that makes it difficult for interstate pipelines to respond to changes in fuel prices.

DOMESTIC DEVELOPMENTS SINCE ENACTMENT OF THE FUEL USE ACT

Domestic energy markets have been fundamentally altered since the 1978 enactment of the FUA. Phased decontrol of natural gas wellhead prices provided by the NGPA has resulted in a significant

surplus of natural gas available to the interestate market. Well over half of the Nation's natural gas supplies are now decontrolled. The ceiling prices on another one-fourth of the Nation's natural gas supplies exceed the price the market is willing to pay. Even ceiling prices applicable to so-called "old" natural gas supplies are being relaxed by the Federal Energy Regulatory Commission's use of its authority under the NGPA to establish higher "just and reasonable" prices for old natural gas. They have done so in Order No. 451, which provides higher prices for old gas supplies if both the producer, and the purchaser, agree.

What some thought was a temporary natural gas "bubble" has been a persistent surplus since shortly after the NGPA was enacted. According to the DOE's most recent *Annual Energy Outlook, 1986* (Energy Information Administration, February 11, 1987), estimates of the annual surplus production capability vary between about 3 and 4.6 trillion cubic feet depending upon the time of year. As demand depletes current reserves, DOE believes this excess capacity will be absorbed sometime during the next 1 to 4 years. This surplus, coupled with a dramatic downturn in both oil and natural gas prices, has drastically altered oil and natural gas producers' exploration and development plans. Testimony before the Committee shows there are tremendous domestic natural gas resources. For example, the March, 1987, DOE Report to the President entitled *Energy Security* cited 200 years of gas available for future consumption at current rates.

There is no doubt that the natural gas surplus is, in part, due to the Federally imposed limitations on natural gas use. As numerous witnesses before the Committee pointed out, removing the constraints on natural gas use will provide an important incentive to gas producers, pipelines, and distribution companies to seek new markets for natural gas. The development of new markets will encourage domestic exploration and development; that, in turn, will improve the prospects for future domestic energy security.

The deregulation of natural gas markets has been coupled by an equally significant change in electricity demand. When the FUA was enacted in 1978, electricity demand had been increasing at an annual rate of around 7 percent. Demand growth fell to 2 percent last year. DOE now projects a national average growth rate of 2.6 percent per year between 1986 and 2000 (*Annual Energy Outlook, 1986*, DOE/EIA, February 11, 1987).

Natural gas availability, coupled with significant changes in electricity demand growth, make the FUA restrictions on fuel choices for electric utilities and industrial users obsolete and counterproductive. Both electric utilities and industrial users need to have maximum flexibility in their choice of fuel to take advantage of today's chaotic energy markets.

SUPPORT FOR THE LEGISLATION

Oil, gas and coal producers, natural gas pipelines, electric utilities, industrial energy users, labor unions, consumer groups, and State regulators all urged the Committee to amend the FUA. While these groups certainly differed in their perspective, they agreed that market conditions ought to dictate the choice of fuels.

Gas interests, utility interests, and consumer interests alike pointed out that repealing the ban on the use of natural gas in new electric powerplants would enable utilities to make additions to their generating capacity in a rational, cost-effective, timely manner. New, high efficiency combined-cycle powerplants were touted as the technology of choice for electric utility generating capacity additions. Such capacity can be added more rapidly and in smaller increments than direct coal-fired capacity, which results in significant savings to consumers during construction.

Under this "phased" construction approach, a "simple cycle" combustion turbine, which is similar to a jet engine, would first be added to a utility's system. Frequently such a plant would be used for peaking purposes. If the need develops, "combined-cycle" capability could be added, with the use of a steam generator to recover waste heat from the initial combustion turbine. Finally, if economic conditions warrant, a "gasifier" could be added to such plants, either on-site or at a nearby coal facility, enabling the use of synthetic gas derived from coal in the combined-cycle powerplant.

Advances in gas combustion turbine technology have made it possible to install a highly efficient gas turbine at the outset that could be altered at a later date if a decision were made to add a gasifier and to run the combustion turbine on low-Btu synthetic gas derived from coal. This type of combustion turbine is "coal convertible"; that is, the turbine itself can be altered at a later date at minimal cost by installing different tubing, nozzles, fuel manifold and the like, so that it is capable of handling the larger volumes of low-Btu coal gas. Such a system is commonly referred to as an integrated gasification combined-cycle powerlant. The 100-megawatt Cool Water facility near Barstow, California, is such a powerplant.

In other cases, the "select use" of natural gas in conjunction with coal at a powerplant or at an industrial installation, could result in reducing sulfur dioxide and nitrogen oxide emissions at significantly less cost than by using a scrubber. Amending the FUA would enable the development and use of such technology.

No witness opposed repealing the incremental pricing requirements of the NGPA.

Legislative History

S. 85 was introduced January 6, 1987. The Subcommittee on Energy Regulation and Conservation held a hearing on March 12, 1987. Its provisions are also included in S. 536, a comprehensive natural gas bill introduced February 17, 1987, by Senator Nickles, and S. 656, the Energy Productivity and Revitalization Act of 1987, introduced on March 3, 1987, by Senator McClure (by request).

The provisions of S. 85, as introduced, are identical to S. 1251, introduced by Senator Domenici in the 99th Congress. Three other bills introduced in the 99th Congress also included the same FUA amendments. Two days of markup were held on S. 1251 on August 7 and 14, 1986, in conjunction with other pending natural gas bills. The provisions of S. 251 originated in S. 615, the Administration's 1983 comprehensive natural gas bill introduced (by request) by Senator McClure in the 98th Congress. They were included in S. 1715,

reported by the Committee (without recommendation) in the 98th Congress.

In the 99th Congress the House passed H.R. 4669, which is substantially similar, by voice vote on September 9, 1986. It has been reintroduced this Congress as H.R. 309. A hearing was held on H.R. 309 on March 11, 1987.

Committee Recommendation and Tabulation of Votes

The Committee on Energy and Natural Resources, in open business session on March 25, 1987, by a unanimous vote of a quorum present recommends that the Senate pass S. 85, if amended as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nays as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Melcher*	
Mr. Bradley	
Mr. Bingaman	
Mr. Wirth	
Mr. Fowler	
Mr. Conrad	
Mr. McClure	
Mr. Hatfield	
Mr. Weicker	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	

* Indicates vote by proxy.

Committee Amendments

The Committee ordered S. 85 reported with several amendments. The principal amendment was an amendment to require that new baseload powerplants have the design capability to be converted from gas or oil to coal as market conditions warrant. The purpose of the amendment is to assure that, in the event shortages or significant price increases occur in oil and natural gas markets, baseload electric generating capacity can technologically be converted to coal. Exemptions to the requirement would continue to be available, as they are under existing law.

The coal convertibility amendment is restricted to new baseload powerplants, as defined in FUA. Major fuel-burning industrial facilities, and peakload and intermediate load electric powerplants, as defined in FUA, would not be required to be capable of being converted to coal.

According to information submitted to the Committee, no initial, additional cost would be involved by requiring a new combustion

turbine to be capable of being converted to coal after it is installed. For example, combustion turbine powerplants currently being manufactured in the United States meet this coal convertability requirement. An owner or operator proposing to install a combustion turbine such as the General Electric MS 7000E or MS 7000F would be able to use the self-certification procedure. Initially such a turbine could use natural gas. The turbine, once installed, could later be retrofitted into an integrated gasification combined-cycle powerplant capable of using low-Btu synthetic gas derived from coal at very little additional cost and using "off the shelf" components for the retrofit.

As originally offered, the amendment would have required an electric powerplant to have adequate land space available to enable it to be converted to coal. That requirement was deleted. The amendment was also amended by adding a self-certification provision that would allow an owner or operator to a new baseload electric powerplant to submit a certification that the new baseload powerplant meets coal capability requirements. Numerous technical and conforming amendments were also adopted.

As originally offered, the amendment would have modified the life-cycle cost test in the existing law. It would have required the cost test to have been made over the life of the plant. That requirement was deleted, leaving the existing law intact whereby the cost test would be made over a 10-year period.

Section-by-Section Analysis

Section 1 is the short title and table of contents; this Act may be referred to as the "Natural Gas Utilization Act of 1987".

Section 2 repeals sections 302, 401, 402, and 405 of the FUA; it also amends the table of contents. The provisions are self-explanatory.

Section 3(a), 3(b) (1), (2), (3), and (5), 3(f), 3(g) (1), (3), (4), and (5), 3(h), 3(i), 3(j), 3(k), 3(l), 3(m), 3(n), 3(o), 3(p) and 3(q) contain conforming amendments to the FUA.

Section 3(b)(4) contains a substantive amendment to the FUA. It inserts a new definition of the term "capability to use coal". This definition of "capability to use coal" requires an electric powerplant subject to section 201 of the FUA to have sufficient inherent design characteristics to permit the addition of the equipment necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source. The definition ensures that a new baseload electric powerplant will not be physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source. Coal capability shall not be defined nor interpreted to require such a baseload powerplant to be immediately able to use coal as its primary energy source on its initial day of operation.

In the case of a baseload powerplant employing a boiler, the boiler must have characteristics (e.g. size) enabling it to handle coal, and there must be adequate space for addition of all necessary pollution control equipment. Space for the actual coal handling facilities would not be required.

In the case of a gas turbine powerplant, the amendment does not require the owner or operator to have adequate land space available for the coal gasifier or other coal handling facilities. If a powerplant owner or operator should decide in the future that it is economic to utilize coal, the owner or operator could obtain off-site acreage for its coal gasification facilities and could connect the two sites by pipeline. Thus it is only the initial power generation equipment itself that must "not be physically, structurally, or technologically precluded from using coal".

Section 3(c) amends the FUA to limit its applicability to the contiguous 48 States and the District of Columbia.

Section 3(d) amends section 201 of the FUA. It repeals the prohibition in the existing law against the use of natural gas or petroleum as a primary energy source in any new electric powerplant. The new subsection 201(a) specifies that no new electric powerplant may be constructed or operated as a baseload powerplant without meeting the coal capability requirement. The exemption process is still available. A new subsection 201(b) specifically excludes new peakload or new intermediate electric powerplants.

Section 3(e) amends section 202 of the FUA. FUA will no longer apply to new major fuel-burning installations. The new section 202 provides a self-certification procedure whereby an owner or operator of a new, baseload electric powerplant proposing to use natural gas or petroleum as its primary energy source may certify that such powerplant has the capability to use coal, as defined.

The self-certification mechanism is also available in the case of a new powerplant (as defined) that received a peakload or intermediate load exemption under FUA. If the owner or operator of that peakload or intermediate load powerplant wishes now to operate the powerplant as a baseload powerplant, the powerplant must comply with the coal capability requirement as do all other new baseload powerplants. It is the Committee's intent that the limitations imposed by the FUA, as amended, would apply only to new, baseload powerplants. Thus any non-baseload powerplants operating for less than 3,500 hours per year would no longer be subject to any strictures imposed by or pursuant to the FUA.

There are several exemption petitions pending before the Department of Energy. In some instances, those exemption petitions would no longer be necessary because the FUA would no longer impose limitations on peakload or intermediate load powerplants or any MFBI's.

Nothing in the new self-certification procedure precludes the owner or operator of a new, baseload powerplant that already has an exemption petition pending from filing under the self-certification provision. Conversely, the owner or operator of a new, baseload powerplant who has already filed for an exemption and such petition is pending before the Department of Energy is not required to utilize the new procedure.

Section 3(g)(2) amends section 212(a)(1)(A) of the FUA. The subsection applies to the owner or operator of a baseload powerplant seeking a permanent exemption under the "cost" test of the FUA. Under the existing law, the Department of Energy must compare the cost of coal with the cost of imported petroleum if the exemption is to be granted. The new section 212(b)(1)(A) would make FUA

cost exemptions available when coal will not be available at a cost which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using the appropriate fuel that would be used as a primary energy source during the useful life of the powerplant involved. Thus, in the case of a powerplant that would use either natural gas or coal, the cost test would be based on a comparison of natural gas and coal, not on the basis of the cost of some "surrogate" imported petroleum product.

The Secretary will have to revise the requirements of the existing cost test rule to reflect this change.

Section 4 amends the Natural Gas Policy Act of 1978 to repeal the incremental pricing requirements of title II. It is self-explanatory.

Section 5 is the effective date; "the provisions of this Act shall take effect on the date of enactment."

Cost and Budgetary Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, March 30, 1987.

Hon. J. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 85, the Natural Gas Utilization Act of 1987, as ordered reported by the Senate Committee on Energy and Natural Resources, March 25, 1987. CBO estimates that this bill would save the federal government about $1.5 million per year over the 1988–1992 period.

Under current law, industrial installations and electric power plants request exemption from the Fuel Use Act to use oil and gas. S. 85 would exclude industrial facilities and peak and intermediate-load powerplants from any Fuel Use Act requirements. In addition, baseload plants would be exempt if their conversion to coal can be certified as technologically feasible. CBO estimates that these changes would reduce administrative costs at the Department of Energy by about $1.3 million annually, because the volume of Fuel Use Act exemption requests would be reduced.

In addition, S. 85 would repeal the incremental pricing provisions of the Natural Gas Policy Act, which relate the price of certain categories of natural gas to the price of fuel oil for industrial users. CBO estimates that the repeal of these provisions would reduce administrative costs at the Federal Energy Regulatory Commission by about $0.2 million per year.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Edward M. Gramlich, Acting Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 85:

The bill would substantially lessen the regulatory impact of the existing law, because major limitations on the use of natural gas or petroleum would be eliminated. The remaining restrictions would apply only to new, baseload powerplants. A self-certification mechanism is provided thus substantially lessening the regulatory burden that would otherwise be in effect.

No personal information would be collected in administering the measure. Therefore, there would be no impact on personal privacy.

A reduction in paperwork would result from full implementation of S. 85.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of Energy setting forth Executive agency recommendations relating to S. 85 are set forth below:

DEPARTMENT OF ENERGY,
Washington, DC, March 12, 1987.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In response to your request, we are pleased to submit our views on S. 85, the "Natural Gas Utilization Act of 1987".

The Department shares your belief in the importance of enacting natural gas legislation now. Much needs to be done to remove the barriers to the full development and use of this most important, valuable, and secure energy resource. The continued regulation of natural gas is keeping its prices artificially high and preventing America from harnessing its enormous benefits. Comprehensive regulatory relief for the natural gas market not only will lower prices for American consumers, but also provide more plentiful supplies of natural gas, increased productivity, more jobs, and less imported oil.

The Department believes that comprehensive natural gas legislation is the key to removing the major barriers to increased production of natural gas in this country. Legislation to repeal the demand restraints of the Powerplant and Industrial Fuel Use Act of 1978 and the incremental pricing requirements of the Natural Gas Policy Act of 1978 would be an important part of this effort. Attaining the fullest range of benefits, however, will require open,

nondiscriminatory access to transportation services and wellhead decontrol of natural gas prices. These components, working together, can ensure the full development and use of this most significant resource.

We share your objective of repealing the demand restraints of the Fuel Use Act and the incremental pricing requirements of the NGPA. We are hopeful, however, that comprehensive legislation will be enacted to secure to the Nation the necessary full range of potential benefits of increased natural gas production. This approach is contained in "The Natural Gas Policy Act Amendments of 1987" included as part of the President's "Trade, Employment, and Productivity Act of 1987", S. 539. This bill has been introduced separately as S. 656.

The Office of Management and Budget advises that from the standpoint of the President's program, there is no objection to the presentation of this report.

Sincerely,

J. MICHAEL FARRELL,
General Counsel.

ADDITIONAL VIEWS OF SENATOR METZENBAUM

Throughout Committee consideration of this issue I have expressed my deep concern about repealing end use restrictions on natural gas.

I am concerned that it will have negative impacts on miners and consumers in my own state and across the nation. Further, the proposal does not promote our nation's energy security.

Baseload utility powerplants represent about 80% of the coal market. By facilitating a shift from coal to gas as the feedstock for such plants, the coal market and related employment opportunities will shrink. This will have a further detrimental impact on regions that are heavily dependent on coal production and are already suffering severe economic problems.

Moreover, domestic gas reserves are declining, and the situation is not likely to improve. For the last 10 years, production has exceeded new discoveries. Discoveries in 1985 were the lowest ever reported to EIA. We have fewer proven reserves now than when the Fuel Use Act was passed.

This casts doubt on the wisdom of encouraging more gas use, particularly in the sectors which could easily use alternate supplies such as coal.

Indeed, the small consumers are the ones who will suffer the consequences of supply shortages. Changes in regulatory policy and marketing practices have so reduced the amount of gas subject to FERC curtailment authority, that today there may not even be enough to assure adequate supplies to the highest priority users in the nation.

There are also likely to be increased costs to small residential and commercial consumers. To date, these consumers have not obtained the full benefit of the recent declines in natural gas prices. Lowest cost gas is generally diverted to the largest users, who are in a better position to bargain with producers and pipelines. The smaller consumers, with less bargaining power, are thus forced to accept highest priced gas. Encouraging even more utility and industrial gas use will only exacerbate the current discrepancy in prices.

Moreover, as a practical matter, the Act has not been a significant impediment to gas use restrictions. Despite shrinking reserves, not one of 411 waiver requests has been rejected outright by DOE. Powerplant waivers granted and pending represent an increase in gas demand of 800 billion cubic feet per year.

I am concerned that the coal convertible amendment adopted by the Committee will not fully alleviate these problems. The amendment only requires that a utility have the capability of converting to coal use in the future. Requirements for adequate land capacity have been eliminated, and utilities are able to self-certify their compliance with convertibility requirements.

Additionally, the amendment allows utilities to get permanent exemption from the convertibility requirements.

As a result it is likely that few, if any, new baseload powerplants will be constructed with the capability to convert to coal, and conversion may be a long and costly undertaking even for those which do maintain such capability.

Left unresolved is the enormous threat of unemployment to our coal miners.

There is no mechanism to guarantee adequate supplies of gas to high priority users in the event of supply shortages. It is likely that the disparity in gas costs to large and small consumers, the erosion of domestic gas reserves, and our increasing dependence on foreign imports of natural gas will be exacerbated.

These are the real issues in this debate, and the failure to resolve them is the source of my concern with the committee bill.

HOWARD M. METZENBAUM.

ADDITIONAL VIEWS OF SENATOR NICKLES

I am pleased that the Senate Committee on Energy and Natural Resources has reported out S. 85, as amended. The adoption of the compromise bodes well for the prompt passage of this needed change in the Powerplant and Industrial Fuel Use Act.

However, as the Congress has done too often in the past, this compromise is a complex amendment that attempts to make a bad law better. Although the compromise indeed makes the Fuel Use Act more bearable, the preferred course would have been outright repeal of the fuel use constraints in the Fuel Use Act.

The federal government should never have passed the Fuel Use Act constraints in the first place. The Congress should not have substituted its "wisdom" for the decision-making skills of electric power company management.

The compromise reached by the committee successfully reduces the uncertainty facing most industrial and electric power companies. But the compromise still would require that, in certain instances, the Department of Energy exemption process be used in order to run existing gas turbines more hours per year. Peaking and intermediate use gas combustion turbines that are not syn-gas convertible cannot run more than 3500 hours per year without seeking an exemption, irrespective of the relative fuel economics that that utility and its customers face. Thus, the Fuel Use Act will continue to impose the potentially inflexible will of the federal government on future fuel use decisions made by the management of the thousands of individual electric power companies.

Moreover, the compromise of S. 85 still requires that for prospective baseload generation facilities, a utility must buy a turbine that will be able to be modified in the future to burn syngas made from coal. Fortunately, a major electric utility in my state is planning to order a qualifying gas combustion turbine because it has excellent fuel efficiencies as well as because it is capable of being converted to use syngas from coal. However, the federal government is once again unwilling to trust company management to make prudent choices, even when that management is already being scrutinized by its local public utility commission.

Requiring the purchase of turbines that can later be modified to use syngas may appear, in 1987, to be reasonable. But by the mid-1990's, will this flexibility be just another costly, government-induced mistake? My colleagues should remember that as late as 1981, the U.S. Department of Energy was forecasting $64.00 oil by 1990.

Investment decisions with respect to fuel use can certainly be made with more up-to-date information and tailored more particularly to a facility's individual circumstances if those decisions are made by the electric power company management, not by federal law.

As a practical matter, the compromise on S. 85 solves the vast majority of the market distortions that are being caused by the Fuel Use Act. At last, industry and power companies will be "allowed" to use natural gas for fuel, helping to keep their costs down.

I am particularly pleased that the committee has adopted a "self-certification" procedure for utilities to use in complying with the "coal capable" requirement retained in the Fuel Use Act in this compromise. The fact that electric power companies will be able to comply with the "coal capable" requirement by certifying to the Department of Energy—and not have to lose time and money going through an approval process in the DOE—is an important part of this compromise. Without the self-certification provisions, electric power companies would be little better off than they are under current law.

Complete repeal of all these Fuel Use Act restrictions would send a better signal to the gas producers as well as gas consumers that the federal government is finally getting out of the regulation of the only fuel still regulated at its source. However, this compromise is as close as anything can get to complete repeal without actually repealing—and it therefore has my support.

DON NICKLES.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 85, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978

Public Law 95-620, November 9, 1978 as amended by Public Law 97-35, August 13, 1981

TITLE I—GENERAL PROVISIONS

Sec. 101. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Powerplant and Industrial Fuel Use Act of 1978".

(b) TABLE OF CONTENTS.—

TITLE I—GENERAL PROVISIONS

Sec. 101. Short title; table of contents.
Sec. 102. Findings; statement of purposes.
Sec. 103. Definitions.
Sec. 104. Territorial application.

TITLE II—NEW FACILITIES

Subtitle A—Prohibitions

[Sec. 201. New electric powerplants.]
Sec. 202. [New major fuelburning installations.] *Certification of Compliance*

Subtitle B—Exemptions

Sec. 211. Temporary exemptions.
Sec. 212. Permanent exemptions.
Sec. 213. General requiremens for exemptions.
Sec. 214. Terms and conditions; compliance plans.

TITLE III—EXISTING FACILITIES

Subtitle A—Prohibitions

Sec. 301. Existing electric powerplants.
[Sec. 302. Existing major fuelburning installations.]
Sec. 303. Rules relating to casebycase and category prohibitions.

Subtitle B—Exemptions

Sec. 311. Temporary exemptions.
Sec. 312. Permanent exemptions.
Sec. 313. General requirements for exemptions.
Sec. 314. Terms and conditions; compliance plans.

TITLE IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

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Sec. 902. Interim petition and consideration for certain exemptions.

Sec. 102. FINDINGS; STATEMENT OF PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the protection of public health and welfare, the preservation of national security, and the regulation of interstate commerce require the establishment of a program for the expended use, consistent with applicable environmental requirements, of coal, and other alternate fuels as primary energy sources for

existing and new electric powerplants [and major fuel-burning installations;] and

(2) the purposes of this Act are furthered in cases in which coal or other alternate fuels are used by electric powerplants [and major fuel-burning installations,] consistent with applicable environmental requirements, as primary energy sources in lieu of natural gas or petroleum.

(b) STATEMENT OF PURPOSES.—The purpose of this Act, which shall be carried out in a manner consistent with applicable environmental requirements, are—

(1) to reduce the importation of petroleum and increase the Nation's capability to use indigenous energy resources of the United States to the extent such reduction and use further the goal of national energy self-sufficiency and otherwise are in the best interest of the United States:

(2) to conserve natural gas and petroleum for uses, other than electric utility or other industrial or commercial generation of steam or electricity, for which there are no feasible alternative fuels or raw material substitutes;

(3) to encourage and foster the greater use of coal and other alternate fuels, in lieu of natural gas and petroleum, as a primary energy source;

(4) to the extent permitted by this Act, to encourage the use of synthetic gas derived from coal or other alternate fuels;

(5) to encourage the rehabilitation and upgrading of railroad service and equipment necessary to transport coal to regions or States which can use coal in greater quantities;

(6) to prohibit or, as appropriate, minimize the use of natural gas and petroleum as a primary energy source and to conserve such gas and petroleum for the benefit of present and future generations;

(7) to encourage the modernization or replacement of existing and new electric powerplants [and major fuel-burning installations] which utilize natural gas or petroleum as a primary energy source and which cannot utilize coal or other alternate fuels where to do so furthers the conservation of natural gas and petroleum;

(8) to require that existing and new electric powerplants [and major fuel-burning installations] which utilize natural gas, petroleum, or coal or other alternate fuels pursuant to this Act comply with applicable environmental requirements;

(9) to insure that all Federal agencies utilize their authorities fully in furtherance of the purposes of this Act by carrying out programs designed to prohibit or discourage the use of natural gas and petroleum as a primary energy source and by taking such actions as lie within their authorities to maximize the efficient use of energy and conserve natural gas and petroleum in programs funded or carried out by such agencies;

(10) to insure that adequate supplies of natural gas are available for essential agricultural uses (including crop drying, seed drying, irrigation, fertilizer production, and production of essential fertilizer ingredients for such uses);

(11) to reduce the vulnerability of the United States to energy supply interruptions; and

(12) to regulate interstate commerce.

Sec. 103. DEFINITIONS.

(a) Unless otherwise expressly provided, for the purposes of this Act—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "person" means any (A) individual, corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company, (B) any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States, or (C) any agency or instrumentality (including any municipality) thereof.

(3)(A) Except as provided in subparagraph (B), the term "natural gas" means any fuel consisting in whole or in part of—

(i) natural gas;

(ii) liquid petroleum gas;

(iii) synthetic gas derived from petroleum or natural gas liquids; or

(iv) any mixture of natural gas and synthetic gas.

(B) The term "natural gas" does not include—

(i) natural gas which is commercially unmarketable (either by reason of quality or quantity), as determined under rules prescribed by the Secretary;

(ii) natural gas produced by the user from a well the maximum efficient production rate of which is less than 250 million Btu's per day;

(iii) natural gas to the extent the exclusion of such gas is provided for in subsection (b); or

(iv) synthetic gas, derived from coal or other alternate fuel, the heat content of which is less than 600 Btu's per cubic foot at 14.73 pounds per square inch (absolute) and 60 degrees Fahrenheit.

(4) The term "petroleum" means crude oil and products derived from crude oil, other than—

(A) synthetic gas derived from crude oil;

(B) liquid petroleum gas;

(C) liquid, solid, or gaseous waste byproducts of refinery operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; or

(D) petroleum coke or waste gases from industrial operations.

(5) The term "coal" means anthracite and bituminous coal; lignite, and any fuel derivative thereof.

(6) The term "alternate fuel" means electricity or any fuel, other than natural gas or petroleum, and includes—

(A) petroleum code, shale, oil, uranium, biomass, and municipal, industrial, or agricultural wastes, wood, and renewable and geothermal energy sources;

(B) liquid, solid, or gaseous waste byproducts of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules perscribed by the Secretary; and

(C) waste gases from industrial operations.

(7)(A) The terms "electric powerplant" and "powerplant" mean any stationary electric generating unit, consisting of a boiler, a gas turbine, or a combined cycle unit, which produces electric power for purposes of sale or exchange and—

(i) has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more electric generating units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) For purposes of subparagraph (A), the term "electric generating unit" does not include—

(i) any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(ii) any cogeneration facility, less than half of the annual electric power generation of which is sold or exchanged for resale, as determind by the Secretary.

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule, to be appropriate.

(8) The term "new electric powerplant" means—

(A) any electric powerplant for which construction or acquisition began on a date on or after the date of enactment of this Act; and

(B) any electric powerplant for which construction or acquisition began on a date after April 20, 1977, and before the date of the enactment of this Act, unless the Secretary finds the construction or acquisition of such powerplant could not be canceled, rescheduled, or modified to comply with the applicable requirements of this Act without—

(i) adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority), or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(9)(A) The term "existing electric powerplant" means any electric powerplant other than a new electric powerplant.

(B) Any powerplant treated under this Act as an existing electric powerplant shall not be treated thereafter as a new electric power-plant merely by reason of a transfer of ownership.

(10)(A) The terms "major fuel-burning installation" and "installation" means a stationary unit consisting of a boiler, gas turbine unit, combined cycle unit, or internal combustion engine which—

(i) has a design capabiity of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more such units which are located at the same site and which is the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) the terms "major fuel-burning installation" and "installation" do not include—

(i) any electric powerplant; or

(ii) any pump or compressor used solely in connection with the production gathering, transmission, storage, or distribution of gases or liquids, but only if there is certification to the Secretary of such use (in accordance with rules prescribed by the Secretary).

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule to be appropriate.

(11) The term "new major fuel-burning installation" means—

(A) Any major fuel-burning installation on which construction or acquisition began on a date on or after the date of the enactment of this Act; and

(B) any major fuel-burning installation on which construction or acquisition began on a date after April 20, 1977, and before the date of the enactment of this Act, unless the Secretary finds the construction or acquisition of such installation could not be canceled, rescheduled, or modified to comply with applicable requirements of this Act without—

(i) incurring significant operational detriment of the unit (as determined by the Secretary); or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(12)(A) The term "existing major fuel-burning installation" means any installation which is not a new major fuel-burning installation.

(B) Such term does not include a major fuel-burning installation for the extraction of mineral resources located—

(i) on or above the Continental Shelf of the United States; or

(ii) on wetlands areas adjacent to the Continental Shelf of the United States,

where coal storage is not practicable or would produce adverse effects on environmental quality.

(C) Any installation treated as an existing major fuel-burning installation shall not be treated thereafter as a new major fuel-burning installation merely by reason of a transfer of ownership.

(13) The term "construction or acquisition began" means when used with reference to a certain date, that—

(A) construction in accordance with final drawings or equivalent design documents (as defined by the Secretary, by rule) began on or after that date; or

(B)(i) construction or acquisition had been contracted for on or after that date, or (ii) if the construction or acquisition had been contracted for before such date, such construction or acquisition could be canceled, rescheduled, or modified to comply with the applicable requirements of this Act—

(I) without imposing substantial financial penalty, as determined under rules prescribed by the Secretary; *and*

(II) in the case of a powerplant, without adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority)[; or].

[(III) in the case of a major fuel-burning installation, without incurring significant operational detriment of the unit (as determined by the Secretary).]

(14) The term "construction" means substantial onsite construction or reconstruction, as defined by rule by the Secretary.

(15) The term "primary energy source" means the fuel or fuels used by any existing or new electric powerplant [or major fuel-burning installation,] except it does not include, as determined under rules prescribed by the Secretary—

(A) the minimum amounts of fuel required for unit ignition, startup, testing, flame stabilization, and control uses, and

(B) the minimum amounts of fuel required to alleviate or prevent (i) unanticipated equipment outages and (ii) emergencies directly affecting the public health, safety, or welfare which would result from electric power outages.

(16) The term "site limitation" means, when used with respect to any powerplant or instalation, any specific physical limitation associated with a particlar site which relates to the use of coal or other alternate fuels as a primary energy source for such powerplant or installation, such as—

(A) inaccessibility to coal or other alternate fuels;

(B) lack of transportation facilities for coal or other alternate fuels;

(C) lack of adequate land or facilities for the handling, use, and storage of coal or other alternate fuels;

(D) lack of adequate land or facilities for the control or disposal of wastes from such powerplant or installation, including lack of pollution control equipment or devices necessary to assure compliance with applicable envionmental requirements; and

(E) lack of an adequate and reliable supply of water including water for use in compliance with applicable environmental requirements.

(17) The term "applicable environmental requirements" include—

(A) any standard, limitation, or other requirement established by or pursuant to Federal or State law (including any final order of any Federal or State court) applicable to

emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the use of coal or other alternate fuels or natural gas or petroleum as a primary source or from the operation of pollution control equipment in connection with such use, taking into account any variance of law granted or issued in accordance with Federal law or in accordance with State law to the extent consistent with Federal law; and

(B) any other standard, limitation, or other requirement established by, or pursuant to, the Clean Air Act, the Federal Water Pollution Control Act, the Solid Waste Disposal Act, or the National Environmental Policy Act of 1969.

(18)(A) The term "peakload powerplant" means a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1,500 hours.

(B) The term "intermediate load powerplant" means a powerplant (other than a peakload powerplant), the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(C) The term "base load powerplant" means a powerplant the electrical generation of which in kilowatt hours exceeds, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(D) Not later than 90 days after the date of the enactment of this Act, the Federal Energy Regulatory Commission shall prescribe rules under which a powerplant's design capacity may be determined for purposes of this paragraph.

(19) the term "cogeneration facility" means an electric powerplant or a major fuel-burning installation which produces—

(A) electric power; and

(B) any other form of useful energy (such as steam, gas, or heat) which is, or will be, used for industrial, commercial, or space heating purposes.

(20) The term "cost", unless the context indicates otherwise, means total costs (both operating and capital) incurred over the estimated remaining useful life of an electric powerplant [or major fuel-burning installation,] discounted to present value, as determined by the Secretary (in the case of powerplants, in consultation with the State regulatory authorities). In the case of an electric powerplant, such costs shall take into account any change required in the use of existing electric powerplants in the relevant dispatching system and other economic factors which are included in planning for the production, transmission, and distribution of electric power within such system.

(21) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electricity by any State regulated electric utility.

(22) The term "air pollution control agency" has the same meaning as given such term by section 302(b) of the Clean Air Act.

(23) The term "electric utility" means any person, including any affiliate, or Federal agency which sells electric power.

(24) The term "affiliate", when used in relation to a person, means another person which controls, is controlled by, or is under common control with, such person.

(25) The term "Federal agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States; and

(D) the government of the District of Columbia.

(26) The term "Btu" means British thermal unit.

(27) The term "Mcf" means, when used in relation to natural gas, 1,000 cubic feet of natural gas.

(28) The term "mixture", when used in relation to fuels used in a unit, means a mixture of such fuels or a combination of such fuels used simultaneously or alternatively in such unit.

(29) The term "fluidized bed combustion" means combustion of fuel in connection with a bed of inert material, such as limestone or dolomite, which is held in a fluid-like state by the means of air or other gases being passed through such materials.

(30) The term "capability to use coal" means requiring an electric powerplant to have sufficient inherent design characteristics which will permit the addition of equipment (including all necessary pollution control devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source. Such definition shall ensure that a new electric powerplant shall not be physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source. Capability to use coal or another alternate fuel shall not be defined or interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

(b) SPECIAL RULES RELATING TO DEFINITIONS OF NATURAL GAS AND ALTERNATE FUEL.—(1) Subject to paragraph (2), natural gas which is to be used by a powerplant [or major fuel-burning installation] shall, for purposes of this Act (other than this subsection), be excluded from the definition of "natural gas" under subsection (a)(3)(B)(iii) and shall be included within the definition of "alternate fuel" under subsection (a)(6) if the person proposing to use such natural gas certifies to the Secretary (together with such supporting documents as the Secretary may require) that—

(A) such person owns, or is entitled to receive, at the point of manufacture, synthetic gas derived from coal or another alternate fuel;

(B) the Btu content of such synthetic gas is equal to, or greater than, the Btu content of the natural gas to be covered by this subsection by reason of such certification, plus the approximate Btu content of any natural gas consumed or lost in transportation;

(C) such person delivers, or arranges for the delivery of, such synthetic gas to a pipeline or pipelines which by transport or displacement are capable of delivering such synthetic gas, mixed with natural gas, to such person; and

(D) all necessary permits, licenses, or approvals from appropriate Federal, State, and local agencies (including Indian tribes) have been obtained for construction and operation of the facilities for the manufacture of the synthetic gas involved[, except that for purposes of the prohibition under section 201(2) against powerplants being constructed without the capability of using coal or another alternate fuel, only permits, licenses, and approvals for the construction of such synthetic gas facilities shall be required under this subparagraph to be certified and documented].

(2) The application of paragraph (1) with respect to the use of natural gas by any powerplant or major-fuel burning installation shall be conditioned on the person using such natural gas submitting to the Secretary a report not later than one year after certification is made under paragraph (1), and annually thereafter, containing the following information:

(A) the source, amount, quality, and point of delivery to the pipeline of the synthetic gas to which paragraph (1) applied during the annual period ending with the calendar month preceding the date of such report; and

(B) the amount, quality, and point of delivery by the pipeline to such person of the natural gas covered by paragraph (1) which is used by the person during such annual period.

[(3) In the case of any boiler subject to a prohibition under section 401, the preceding provisions of this subsection shall apply with respect to such boiler to the same extent and in the same manner as they apply in the case of major fuel-burning installations.]

[(4)] *(3)* For purposes of this subsection, the term "pipeline" means any interstate or intrastate pipeline or local distribution company.

Sec. 104. TERRITORIAL APPLICATION.

The provisions of this Act shall apply [in all the] *within the contiguous 48* States[. Puerto Rico,] and the [territories and possessions of the United States, except that—] *District of Columbia—*

(1) the provisions of titles II and III (other than section 301) shall only apply to powerplants and installations situated within the contiguous 48 States, Alaska, and the District of Columbia; and

(2) the provisions of section 301 shall only apply to powerplants situated within the contiguous 48 States and the District of Columbia.

TITLE II—NEW FACILITIES

Subtitle A—Prohibitions

Sec. 201. NEW ELECTRIC POWERPLANTS.

Except to such extent as may be authorized under subtitle B—

[(1) natural gas or petroleum shall not be used as a primary energy source in any new electric powerplant; and

[(2)] *(a)* no new electric powerplant may be constructed *or operated as a baseload powerplant* without the capability to use coal or any other alternate fuel as a primary energy source.

(b) The prohibition contained in this section shall not apply to any peakload powerplant or to any intermediate load powerplant; provided, however, that hours of generation pursuant to emergency situations as defined by the Secretary and reported to the Secretary shall not be included in determining whether a powerplant is being operated as a baseload powerplant.

[Sec. 202. NEW MAJOR FUEL-BURNING INSTALLATIONS.

[(a) GENERAL PROHIBITION.—Except to such extent as may be authorized under subtitle B, natural gas or petroleum shall not be used as a primary energy source in a new major fuel-burning installation consisting of a boiler.

[(b) AUTHORITY OF SECRETARY TO PROHIBIT NONBOILERS FROM USING NATURAL GAS OR PETROLEUM.—(1) The Secretary may, by rule, prescribe categories (identified in such rules) of new major fuel-burning installations, other than boilers, in which natural gas or petroleum, or both, shall be prohibited from being used as a primary energy source. In identifying categories of new major fuel-burning installations pursuant to this paragraph, the Secretary shall take into account any special circumstances or characteristics of each category of such installations (such as the technical feasibility of burning coal or other alternate fuels and the size or geographic location of such installations).The application of any such final rule in the case of any new major fuel-burning installation subject to such rule shall be stayed pending a resolution (including judicial review) of any petition for an exemption for such installation which is filed with the Secretary not later than 60 days after such final rule is published under section 702(a). Any such final rule shall not apply in the case of any installation with respect to which a comparable prohibition was issued by order (or was proposed but was not issued because it was demonstrated that it could qualify for an exemption under subtitle B).

[(2)(A) The Secretary may, by order, prohibit the use of natural gas or petroleum, or both, as a primary energy source in any new major fuel-burning installation, other than a boiler, if such installation is not, at the time of the issuance of the proposed order, in a category identified in a final rule issued under paragraph (1).

[(B) Subject to subparagraph (C), the Secretary shall not issue a final order under this paragraph with respect to any installation if it is demonstrated that there would have been granted an exemption for such installation if such prohibition had been established by rule pursuant to paragraph (1) rather than by order pursuant to this paragraph, except that if a temporary exemption would have been granted, such a final order may be issued but may not take effect until such time as such temporary exemption would have terminated.

[(C) In any case in which an order is not issued by reason of subparagraph (B) or in which the effective date of such order is delayed under subparagraph (B), the Secretary shall take such steps as may be necesssary to assure the installation involved complies

with the same requirements (including provisions of section 214(a)) as would have been applicable if an exemption had been granted based upon the grounds for which the order is not issued or the effective date of which is delayed.

[(3) A prohibition under this subsection shall only apply with respect to an installation for which construction or acquisition began on or after the date of the publication under section 701(b) of the proposed rule or order establishing the prohibition. Any installation not subject to such a prohibition because of the preceding sentence shall be considered an existing major fuel-burning installation for purposes of title III.]

Sec. 202. CERTIFICATION OF COMPLIANCE.

(a) Self-certification.—In order to meet the requirement of section 201(a), the owner or operator of any new baseload electric powerplant proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary prior to construction, or prior to operation as a base load powerplant in the case of a new peakload or new intermediate load electric powerplant, that such powerplant has the capability to use coal, as defined in section 103(a)(30).

(b) Technical Information.—The Secretary may require the owner or operator of such powerplant to provide such supporting documents as may be necessary to verify the certification.

Subtitle B—Exemptions

Sec. 211. TEMPORARY EXEMPTIONS.

(a) GENERAL EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS, OR ENVIRONMENTAL REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption for a powerplant [or installation] from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant [or installation] at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of [using imported petroleum] *the fuel that would be used* as a primary energy source;

(2) one or more site limitations exist which would not permit the location or operation of such a powerplant [or installation] using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 201 or 202 could not be satisfied without violating applicable environment requirements.

(b) TEMPORARY EXEMPTION BASED UPON FUTURE USE OF SYNTHETIC FUELS.—After consideration of a petition (and comments there-

on) for an exemption for a powerplant [or installation] from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of subtitle A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 214(b).

[(c) TEMPORARY PUBLIC INTEREST EXEMPTION.—After consideration of a petition (and comments thereon) for an exemption for a powerplant [or installation] from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, the issuance of such exemption would be in the public interest and would be consistent with the purposes of this Act.

[(d) TEMPORARY EXEMPTION FOR THE USE OF PETROLEUM BY CERTAIN INSTALLATIONS.—After consideration of a petition (and comments thereon) for an exemption from the prohibition of the use of petroleum under section 202 for an installation with a design capacity of consuming any fuel (or any mixture thereof) at a fuel heat input rate which does not exceed 300 million Btu's per hour, the Secretary may, be order, grant an exemption under this subsection for the use of petroluem if he finds that the petitioner has demonstrated, by the existence of binding contracts or other evidence, including appropriate State construction permits, that he will use coal or another alternate fuel for at least 75 percent of the annual fuel heat input rate upon the expiration of such exemption. For provisions relating to authority to receive, consider and granting (or denying) certain petitions for an exemption under this subsection, see section 902(b).

[(e)] *(c)* DURATION OF TEMPORARY EXEMPTIONS.—(1) Except as provided in paragraph (2), exemptions under this section for any powerplant [or installation] may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) An exemption under subsection (b) may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) If an exemption is granted for any powerplant [or installation] before the powerplant [or installation] is placed in service, the period before it is placed in service shall not be taken into account in computing the 5-year and the 10-year limitations of paragraphs (1) and (2).

Sec. 212. PERMANENT EXEMPTIONS.

(a) PERMANENT EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS, OR ENVIRONMENTAL REQUIREMENTS OR ADEQUATE CAPITAL.—(1) After consideration of a petition (and comments thereon) for an exemption for a powerplant [or installation] from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available within the first 10 years of the useful life of the powerplant [or installation] or (ii) will not be available at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of [using imported petroleum] *the fuel that would be used* as a primary energy source during the useful life of the powerplant [or installation] involved;

(B) one or more site limitations exist which would not permit the location or operation of such powerplant [or installation] using coal or any other alternate fuel as a primary energy source;

(C) the prohibitions of subtitle A could not be satisfied without violating applicable environmental requirements; or

(D) the required use of coal or any other alternative fuel would not allow the petitioner to obtain adequate capital for the financing of such powerplant [or installation].

(2) The demonstration required to be made by a petitioner under paragraph (1) shall[—

[(A) in the case of a new major fuel-burning installation, be made with respect to the site of such installation proposed by the petitioner; and

(B)] in the case of a new electric powerplant, be made with respect to the site of such powerplant and reasonable alternative sites.

(3) Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (h) may not be granted an exemption under this subsection.

(b) PERMANENT EXEMPTION DUE TO CERTAIN STATE OR LOCAL REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption for a powerplant [or installation] from one more of the prohibitions of subtitle A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) with respect to the proposed site of the powerplant [or installation,] the construction or operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement (other than a building code or a nuisance or zoning law);

(2) in the case of a powerplant, there is no reasonable alternative site for such powerplant which meets the criteria set forth in subsection (a)(1)(A) through (D); and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this Act.

(c) PERMANENT EXEMPTION FOR COGENERATION.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) PERMANENT EXEMPTION FOR CERTAIN MIXTURES CONTAINING NATURAL GAS OR PETROLEUM.—[(1)] After consideration of a petition (and comments thereon) for an exemption for a powerplant [or installation] from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

[(A)] *(1)* the powerplant [or installation] uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

[(B)] *(2)* the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant [or installation] needed to maintain reliability of operation of such powerplant [or installation] consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

[(2) In the case of a new major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent.]

(e) PERMANENT EXEMPTION FOR EMERGENCY PURPOSES.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant [or installation], the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant [or installation] will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

(f) PERMANENT EXEMPTION FOR POWERPLANTS NECESSARY TO MAINTAIN RELIABILITY OF SERVICE.—After consideration of a petition (and comments thereon) for an exemption for a powerplant from one or more of the prohibitions of subtitle A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum: if he finds that the petitioner has demonstrated that—

(1) such exemption is necessary to prevent inpairment of reliability of service, and

(2) the petitioner, despite diligent good faith efforts, is not able to make the demonstration necessary to obtain an exemption under subsection (a) or (b) in the time required to prevent such impairment of service.

[(g) PERMANENT EXEMPTION FOR PEAKLOAD POWERPLANTS.—After consideration of a petition (and comments thereon for an exemption for a powerplant—

[(1) in the case of a proposed use of petroleum the Secretary shall, by order, grant a permanent exemption under this subsection with respect to petroleum if the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant; and

[(2) in the case of a proposed use of natural gas the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas if—

[(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region of a pollutant for which any national ambient air quality standard is or would be exceeded; and

[(B) the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant.

[(h) PERMANENT EXEMPTION FOR INTERMEDIATE LOAD POWERPLANTS.—(1) After consideration of a petition and comments thereon) for an exemption from one or more of the prohibitions of subtitle A on the use of petroleum by a powerplant, the Secretary may grant a permanent exemption under this subsection for such use, by order, if he finds that the petitioner has demonstrated that—

[(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded;

[(B) such powerplant is to be constructed and operated only to replace no more than the equivalent capacity of existing electric powerplants—

[(i) which use natural gas or petroleum as a primary source,

[(ii) which are owned by the same person who is to operate such powerplant, and

[(iii) which, if they use coal as a primary energy source, would cause or contribute to such a concentration in such area;

[(C) such powerplant is to be operated solely as an intermediate load powerplant;

[(D) the net heat input rate for such powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the useful life of the powerplant;

[(E) there is no reasonable alternative site for such powerplant which meets the criteria set forth in subsection (a)(1) (A) through (D); and

[(F) the powerplant is to be constructed with the capability to use a synthetic fuel derived from coal or other alternate fuel.

[(2) The Secretary shall, from time to time, review each exemption granted to a powerplant under this subsection, and shall terminate such exemption when he finds that there is available a supply of synthetic fuel derived from coal or other alternate fuel suitable for use as a primary energy source by such powerplant.

[(i) PERMANENT EXEMPTIONS FOR INSTALLATIONS BASED UPON PRODUCT OR PROCESS REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption for an installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

[(1) the use of coal or another alternate fuel is not technically feasible dur to the necessity to maintain satisfactory control of product quality; and

[(2) substitution of steam is not technically feasible due to process requirements.

[(j) PERMANENT EXEMPTION FOR INSTALLATIONS NECESSARY TO MEET SCHEDULED EQUIPMENT OUTAGES.—After consideration of a petition (and comments thereon) for any exemption from one or more of the prohibitions of subtitle A for an installation, the Secretary may, by order, grant a permanent exemption under this subsection if he finds that the petitioner has demonstrated that such exemption is necessary to meet scheduled equipment outages (as defined by the Secretary by rule.]

Sec. 213. GENERAL REQUIREMENTS FOR EXEMPTIONS.

(a) USE OF MIXTURES OR FLUIDIZED BED COMBUSTION NOT FEASIBLE.—Except in the case of an exemption under section 212(d) or (g), the Secretary may grant a permanent exemption for a powerplant or installation under this subtitle only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal or another alternate fuel, for which an exemption under section 212(d) would be available is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or another alternate fuel is economically and technically feasible.

(b) STATE APPROVAL REQUIRED FOR POWERPLANT.—If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption—

(1) to the extent it applies to the prohibition under section 201 (2) against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained; and

(2) to the extent it applies to the prohibition under section 201 (1) against the use of natural gas or petroleum as a primary energy source, shall not take effect until all approvals re-

quired by such State regulatory authority which relate to construction or operation have been obtained.

(c) NO ALTERNATIVE POWER SUPPLY IN THE CASE OF A POWERPLANT.—(1) Except in the case of an exemption under section 212(c) or (g), the Secretary may not grant an exemption for a new powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with such Commission before making any finding on such petition under paragraph (1).

Sec. 214. TERMS AND CONDITIONS; COMPLIANCE PLANS.

(a) TERMS AND CONDITIONS GENERALLY.—Any exemption from any prohibition under this subtitle shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this Act. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b)) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant or intallation covered by such exemption will comply with the applicable prohibitions.

(b) COMPLIANCE PLANS.—A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibitions of this Act will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow or such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

TITLE III—EXISTING FACILITIES

Subtitle A—Prohibitions

Sec. 301. EXISTING ELECTRIC POWERPLANTS.

(a) CERTIFICATION BY POWERPLANTS OF COAL CAPABILITY.—At any time, the owner or operator of an existing electric powerplant may certify to the Secretary, for purposes of subsection (b)—

(1) whether or not such power plant has or previously had the technical capability to use coal or another alternate fuel as a primary energy source;

(2) whether or not such powerplant could have the technical capability to use coal or another alternate fuel as a primary energy source without having—

(A) substantial physical modification of the powerplant, or

(B) substantial reduction in the rated capacity of the powerplant; and

(3) whether or not it is financially feasible to use coal or another alternate fuel as a primary energy source in such a powerplant.

(b) AUTHORITY OF SECRETARY TO PROHIBIT WHERE COAL OR ALTERNATE FUEL CAPABILITY EXISTS.—The Secretary may prohibit, in accordance with section 303(a) or (b), the use of petroleum or natural gas, or both, as a primary energy source in any existing electric powerplant, if an affirmative certification under subsection (a)(1), (2), and (3) is in effect with respect to such powerplant and if, after examining the basis for the certification the Secretary concurs with the certification.

(c) AUTHORITY OF SECRETARY TO PROHIBIT EXCESSIVE USE IN MIXTURES.—At any time, the owner or operator of an existing electric powerplant may certify to the Secretary for purposes of this subsection whether or not it is technically and financially feasible to use a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source in that powerplant. If an affirmative certification under this subsection is in effect with respect to such powerplant and if, examining the basis for the certification, the Secretary concurs with the certification, the Secretary may prohibit, in accordance with section 303(a), the use of petroleum or natural gas, or both, in such powerplant in amounts in excess of the minimum amount necessary to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of such mixture.

(d) AMENDMENT OF SUBSECTION (a) AND (c) CERTIFICATIONS.—The owner or operator of any such powerplant may at any time amend any certification under subsection (a) or (c) in order to take into account changes in relevant facts and circumstances; except that no such amendment to such a certification may be made after the date of any final prohibition under subsection (b) or (c) based on that certification.

[Sec. 302. EXISTING MAJOR FUEL-BURNING INSTALLATIONS.

[(a) AUTHORITY OF SECRETARY TO PROHIBIT WHERE COAL OR ALTERNATE FUEL CAPABILITY EXISTS.—The Secretary may prohibit, in accordance with section 303(a) or (b), the use of petroleum or natural gas, or both, as a primary energy source in any existing major fuel-burning installation, if the Secretary finds that—

[(1) such installation has or previously had the technical capability to use coal or another alternate fuel as a primary energy source;

[(2) such installation has the technical capability to use coal or another alternate fuel as a primary energy source, or it could have such capability without—

[(A) substantial physical modification of the unit, or

[(B) substantial reduction in the rated capacity of the unit; and

[(3) it is financially feasible to use coal or another alternate fuel as a primary energy source in such installation.

The requirement of paragraph (1) shall not be considered to be satisfied unless the finding under such paragraph is made before the date of the publication of the notice of proposed prohibition under section 701(b) and is published with such notice.

[(b) AUTHORITY OF SECRETARY TO PROHIBIT EXCESSIVE USE IN MIXTURES.—

[(1) In the case of any existing major fuel-burning installation in which the Secretary finds it is technically and financially feasible to use a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source the Secretary may prohibit, in accordance with section 303(a), the use of petroleum or natural gas, or both, in such installation in amounts in excess of the minimum percentage of the total Btu heat input of the primary energy sources needed to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of such mixture.

[(2) The percentage determined by the Secretary under paragraph (1) shall not be less than 25 percent.]

Sec. 303. RULES RELATING TO CASE-BY-CASE AND CATEGORY PROHIBITIONS.

(a) CASE-BY-CASE PROHIBITIONS.—(1) Except to the extent authorized by subsection (b), the Secretary shall prohibit any powerplant [or installation] from using natural gas or petroleum under the authority granted him under section 301(b) or (c) [or 302] only by means of a final order issued by him which shall be limited to the particular powerplant [or installation] involved.

(2) The Secretary may issue such a final order only with respect to a powerplant [or installation] which is not, at the time the proposed order is issued, covered by a final rule issued under section (b).

[(3)(A) Subject to subparagraph (B), the Secretary shall not issue a final order under this subsection to any powerplant [or installation] if it is demonstrated that such powerplant [or installation] would have been granted an exemption if such prohibition had been established by a final rule pursuant to subsection (b) rather than by order pursuant to this subsection, except that if a temporary exemption would have been granted, such a final order may be issued but may not take effect until such time as the temporary exemption would have terminated.

[(B) In any case in which an order is not issued by reason of subparagraph (A) or in which the effective date of such order is delayed under subparagraph (A), the Secretary shall take such steps as may be necessary to assure the installation invovled complies with the same requirements (including provisions of section 314(a)) as would have been applicable if an exemption had been granted based upon the grounds for which the order is not issued or the effective date of which is delayed.]

(b) PROHIBITIONS APPLICABLE TO CATEGORIES OF FACILITIES.—(1) The Secretary may, by rule, prohibit the use of natural gas or petroleum [pursuant] *under* [to] section 301(b) [or 302(a)—] *in existing electric powerplants*—

[(A) in the case of any category of existing electric powerplants identified in such rule; and

[(B) in the case of any category of existing major fuel-burning installations which have design capabilities of consuming fuel (or any mixture thereof) at a fuel heat input rate of 300 million Btu's per hour or greater which are identified in such rule.]

(2) Each powerplant [or installation] to be covered by any final rule issued under this subsection shall be specifically identified in the proposed rule published under section 701(b).

(3) In prescribing any final rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of powerplants [or installations] (such as the intermittent use, size, age, or geographic location of such powerplants [or intallations]. Any such rules shall not apply in the case of any existing electric powerplant [or major fuel-burning installations—] *with respect to which a comparable prohibition was issued by order—*

(A) pending a resolution (including judicial review) of any petition for any exemption for such powerplant [or installation] which may be filed with the Secretary not later than 60 days after such final rule is published under section 702(a); or

(B) with respect to which a comparable prohibition was issued by order (or was proposed but was not issued by reason of subsection (a)(3)).

Subtitle B—Exemptions

Sec. 311. TEMPORARY EXEMPTIONS.

(a) TEMPORARY EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS, OR ENVIRONMENTAL REQUIREMENTS.—After consideration of a petition (and comments therein) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary shall, by order, grant such an exemption for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant or installation at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the costs, as determined by rule by the Secetary, of using imported petroleum as a primary energy source;

(2) one or more site limitations exist which would not permit the operation of such a powerplant or installation using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 301 or 302 could not be satisfied without violating applicable environmental requirements.

(b) TEMPORARY EXEMPTION BASED UPON FUTURE USE OF SYNTHETIC FUELS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of subtitle A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an examption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 314(b).

(c) TEMPORARY EXEMPTION BASED UPON USE OF INNOVATIVE TECHNOLOGIES.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant or installation will comply with such prohibitions at the expiration of such exemption by the adoption of a technology for the use of coal or another alternate fuel which at the time of the granting of the exemption is determined by the Secretary to be an innovative technology. The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 314(b).

(d) TEMPORARY EXEMPTION FOR UNITS TO BE RETIRED.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant or installation is to permanently cease operation at or before the expiration of the exemption period. An exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 314(b) (other than paragraph (1)(B)).

(2) Notwithstanding any other provision of this Act, an examption under this subtitle may not be granted for any powerplant or installation once an exemption under this subsection has been granted for such powerplant or installation.

(e) TEMPORARY PUBLIC INTEREST EXEMPTION.—After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary may, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption is in the public interest and is consistent with the purposes of this Act.

(f) TEMPORARY EXEMPTION FOR PEAKLOAD POWERPLANTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant.

(g) TEMPORARY EXEMPTION FOR POWERPLANTS WHERE NECESSARY TO MAINTAIN RELIABILITY OF SERVICE.—(1) After consideration of a petition (and comments thereon) for an exemption from one or

more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such exemption is necessary to prevent impairment of reliability of service.

(2) Notwithstanding any other provision of this Act, an exemption under this subtitle (other than a permenent exemption under section 312(f) for the use of petroleum) may not be granted for any powerplant for which an exemption under this subsection has been granted.

(h) DURATION OF TEMPORARY EXEMPTIONS.—(1) Exempt as provided in paragraphs (2) and (3), exemptions under this section for any powerplant or installation may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal 10 years.

(B) Subject to paragraph (3), an exemption under subsections (b), (c), and (g) may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) An exemption under subsections (d), (f), and (g) for the use of natural gas by a powerplant may not extend beyond December 31, 1994.

(4) In computing the 5-year and 10-year limitations of paragraphs (1) and (2) in the case of any exemption under this section, the period before the prohibition on the use of natural gas and petroleum would first apply (if the exemption had not been granted) shall be disregarded.

Sec. 312. PERMANENT EXEMPTIONS.

(a) PERMANENT EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS OR ENVIRONMENTAL REQUIREMENTS.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuels of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant or installation at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum as a primary energy source during the remaining useful life of the powerplant or installation;

(B) one or more site limitations exist which would not permit the operation of such a powerplant or installation using coal or any other alternate fuel as a primary energy source; or

(C) the prohibitions of subtitle A could not be satisfied without violating applicable environmental requirements.

(2) Notwithstanding the preceding provisions of this subection, a powerplant which has been granted an exemption under subsection (g) may not be granted an exemption under this subsection.

(b) PERMANENT EXEMPTION DUE TO CERTAIN STATE OR LOCAL REQUIREMENTS.—After consideration of a petition (and comments thereon) for and exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(1) with respect to the site of the powerplant or installation, the operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement;

(2) if such State or local requirement is under a building code or nuisance or zoning law, no other exemption under this subtitle could be granted for such facility; and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this Act.

(c) PERMANENT EXEMPTION FOR COGENERATION.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) PERMANENT EXEMPTION FOR CERTAIN FUEL MIXTURES CONTAINING NATURAL GAS OR PETROLEUM.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the powerplant or installation uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(B) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input on the primary energy sources of such powerplant or installation needed to maintain reliability of operation of the unit consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

(2) In the case of an existing major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent.

(3) In the case of an existing electric powerplant, the Secretary may authorize higher percentage than that referred to in paragraph (1)(B) if he finds that the higher percentage of natural gas allowed would be mixed with synthetic fuels derived from municipal wastes or agricultural wastes and would encourage the use of alternate or new technologies which use renewable sources of energy.

(e) PERMANENT EXEMPTION FOR EMERGENCY PURPOSES.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that such powerplant or installation will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

(f) PERMANENT EXEMPTION FOR PEAKLOAD POWERPLANTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that—

(1) the powerplant is operated solely as a peakload powerplant;

(2) a denial of such petition is likely to result in an impairment of reliability of service; and

(3)(A) modification of the powerplant to permit compliance with such prohibitions is technically infeasible; or

(B) such modification would result in an unreasonable expense.

(g) PERMANENT EXEMPTION FOR INTERMEDIATE LOAD POWERPLANTS—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A on the use of petroleum by a powerplant, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such area;

(B) such powerplant is to be operated only to replace no more than the equivalent capacity of existing electric powerplants—

(i) which use natural gas or petroleum as a primary energy source,

(ii) which are owned by the same person who is to operate such powerplant, and

(iii) which, if they used coal as a primary energy source, would cause or contribute to such a concentration in such region;

(C) such powerplant is and shall continue to be operated soley as an intermediate loan powerplant;

(D) the net fuel heat input rate for such powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the remaining useful life of the powerplant; and

(E) the powerplant has the capability to use synthetic fuels derived from coal or other alternate fuel.

(2) The Secretary shall, from time to time, review each exemption granted to a powerplant under this subsection, and shall ter-

minate such exemption if he finds that there is available a supply of synthetic fuel derived from coal or other alternate fuel suitable for use as a primary energy source by such powerplant.

(h) PERMANENT EXEMPTION FOR USE OF NATURAL GAS BY CERTAIN POWERPLANTS WITH CAPACITIES OF LESS THAN 250 MILLION BTU'S PER HOUR.—(1) Subject to paragraph (2), after consideration of a petition (and comments thereon) for an exemption from any prohibition of subtitle A for the use of natural gas by a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for such use, if he finds that the petitioner had demonstrated that—

(A) such powerplant has a design capability of consuming fuel (or any mixture thereof) at a fuel heat input rate of less than 250 million Btu's per hour;

(B) such powerplant was a baseload powerplant on April 20, 1977; and

(C) such powerplant is not capable of consuming coal without—

(i) substantial physical modification of the unit; or

(ii) substantial reduction in the rated capacity of the unit (as determined by the Secretary).

(2) An exemption under this subsection may only apply to the prohibitions under section 301 and prohibitions established by final rules or orders issued before January 1, 1990.

(i) PERMANENT EXEMPTION FOR THE USE OF LNG BY CERTAIN POWERPLANTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitors of subtitle A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of liquefied natural gas if the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) has certified to the Secretary that the use of coal by such powerplant as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such region or area and the use of coal would not comply with applicable environmental requirements.

(j) PERMANENT EXEMPTION FOR INSTALLATIONS SERVED BY CERTAIN INTERNATIONAL PIPELINES.—(1) After consideration of a petition (and comments thereon) for an exemption for an installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of natural gas, if he finds that the petitioner has demonstrated that—

(A) such installation's primary source of natural gas is under a contract with a pipeline between Canada and the United States which cannot be cancelled by the petitioner without his suffering substantial financial penalty;

(B) such pipeline was supplying to such installation before April 21, 1977, natural gas from Canada under such contract;

(C) such pipeline serves high-priority users within the United States service to whom would be jeopardized if service to such installation is terminated;

(D) the revenues from the transportation and sale of natural gas transported by such pipeline are essential to the economic vitality of the pipeline; and

(E) the exemption is consistent with the purposes of this Act, and the denial of such exemption would not result in natural gas being made available for any other use within the United States.

(2) For purposes of this subsection, the term "high-priority user" means any residential user of natural gas, or any commercial user whose consumption of natural gas on a peak day is less than 50 Mcf, as determined by the Secretary.

(k) PERMANENT EXEMPTION FOR INSTALLATION BASED UPON PRODUCT OR PROCESS REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption for an installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(1) the use of coal or other alternate fuels is not technically feasible due to the necessity to maintain satisfactory control of product quality; and

(2) substitution of steam is not technically feasible due to process requirements.

(l) PERMANENT EXEMPTION FOR INSTALLATIONS NECESSARY TO MEET SCHEDULED EQUIPMENT OUTAGES.—After consideration of a petition (and comments thereon) for any exemption from one or more of the prohibitions of subtitle A for an installation, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that such exemption is necessary to meet scheduled equipment outages (as defined by the Secretary by rule).

Sec. 313. GENERAL REQUIREMENTS FOR EXEMPTIONS.

(a) USE OF MIXTURES OR FLUIDIZED BED COMBUSTION NOT FEASIBLE.—Except in the case of an exemption under section 312(b), (f), (i) or (j), the Secretary may grant a permanent exemption for a powerplant or installation under this subtitle only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal (or other alternate fuels), for which an exemption under section 312(b) would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or an alternate fuel is economically and technically feasible.

(b) NO ALTERNATIVE POWER SUPPLY IN THE CASE OF A POWERPLANT.—(1) In the case of an exemption under section 312(b) or (g), the Secretary may not grant an exemption for an existing powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a rasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with the Commission before making any finding on such petition under paragraph (1).

Sec. 314. TERMS AND CONDITIONS; COMPLIANCE PLANS.

(a) TERMS AND CONDITIONS GENERALLY.—Any exemption from any prohibition under this subtitle shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this Act. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b)) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant or installation covered by such exemption will comply with the applicable prohibitions.

(b) COMPLIANCE PLANS.—A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibition of this Act will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow for such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

TITLE IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

[Sec. 401. AUTHORITY TO PROHIBIT USE OF NATURAL GAS IN CERTAIN BOILERS USED FOR SPACE HEATING.

[(a) EXISTING BOILERS.—The Secretary may prohibit the use of natural gas as a primary energy source in any existing boiler (other than a major fuelburning installation) if he finds that—

[(1) such boiler is used to produce steam for space heating purposes;

[(2) such boiler consumes 300 Mcf or more of natural gas per day on a peak day;

[(3) such boiler has, or previously had, the technical capability to use petroleum as a primary energy source;

[(4) such boiler has the technical capability to use petroleum as a primary energy source or it could have such capability without—

[(A) substantial physical modification of the boiler, or

[(B) substantial reduction in the rated capacity of the unit;

[(5) it is financially feasible for such boiler to use petroleum as a primary energy source; and

[(6) such prohibition is consistent with the purposes of this Act.

The requirement of paragraph (3) shall not be considered to be satisfied unless the finding under such paragraph is made before the date of the publication of the notice of proposed prohibition under section 701(b).

[(b) NEW BOILERS.—The Secretary may prohibit the use of natural gas as a primary energy source in any new boiler (other than a major fuel-burning installation) if he determines that—

[(1) such boiler will be used to produce steam for space heating purposes;

[(2) such boiler will, by design, be capable of consuming 300 Mcf or more of natural gas per day; and

[(3) such prohibition is consistent with the purposes of this Act.

[(c) EXEMPTION.—The Secretary shall exempt any person from any prohibition prescribed pursuant to subsection (a) or (b) if such person demonstrates to the Secretary that an adequate and reliable source of petroleum is not likely to be available to such person during the period of the exemption.

[(d) DEFINITIONS.—

[(1) The term "new boiler" means any boiler for which there was not a commitment for construction or acquisition as of the date of the publication under section 701(b) of the proposed rule or order establishing the prohibition.

[(2) The term "existing boiler" means any boiler other than a new boiler.

[(e) METHOD OF PROHIBITION.—(1)(A) Except to the extent authorized by paragraph (2), the Secretary shall prohibit boiler fuel use of natural gas under the authority granted him in subsection (a) or (b) only by means of a final order issued by him which shall be limited to the particular boiler involved.

[(B) The Secretary may issue such an order only with respect to a boiler which is not, at the time the proposed order is issued, covered by a final rule issued under paragraph (2).

[(C) The Secretary shall not issue a final order under this subsection with respect to any boiler if it is demonstrated that an exemption under subsection (c) would have been granted with respect to such boiler if such prohibition had been established by rule pursuant to paragraph (2) rather than by order.

[(2)(A) The Secretary may, by rule, prohibit the use of natural gas under the authority of subsection (a) or (b) in the case of any category of boilers identified in such rule.

[(B) Any existing boiler to be covered by any rule issued under this subsection shall be specifically identified in the proposed rule published under section 701(b).

[(C) In prescribing any rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of boilers (such as the technical feasibility of burning petroleum and the size, age, or geographic location of such boilers). Any such final rule shall not apply in the case of any boiler—

[(i) subject to such rule pending a resolution of any petition (including judicial review) for any exemption for such boiler which may be filed with the Secretary not later than 60 days after such rule is published under section 701(b); or

[(ii) with respect to which a comparable prohibition was issued by order (or was proposed but was not issued because it was demonstrated that it would qualify for an exemption under subsection (c)).

[Sec. 402. PROHIBITION ON USE OF NATURAL GAS FOR DECORATIVE OUTDOOR LIGHTING.

[(a) PROHIBITION ON INSTALLATION OF NEW OUTDOOR LIGHTING.—Effective beginning on the date of the enactment of this Act, no local distribution company, or any industrial user of natural gas who obtains such gas under a contract between such user and a

natural gas pipeline, or any agent thereof, shall install any outdoor lighting fixture using natural gas.

[(b) PROHIBITION OF SELLING NATURAL GAS TO BE USED IN OUTDOOR LIGHTING.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary shall, by rule, prohibit any local distribution company (unless an exemption has been obtained under subsection (c)) from providing natural gas service for use in outdoor lighting (other than any outdoor lighting fixture which was installed before the date of the enactment of this Act for use in connection with a residence and for which natural gas was being provided on such date of enactment)—

[(A) effective on the date such final rule is issued, in the case of any residential, commercial or industrial customer unless a later effective date is applicable under subparagraph (B) or (C) of this paragraph;

[(B) effective beginning 180 days after the date such final rule is issued, in the case of any industrial or commercial structure for which natural gas was being provided by such company for outdoor lighting use on the date of the enactment of this Act; and

[(C) effective beginning January 1, 1982, in the case of any municipal lighting fixture for which natural gas was being provided by such company for outdoor lighting use on the date of the enactment of this Act.

[(2) The rule prescribed under paragraph (1) shall provide that any industrial user of natural gas who obtains such natural gas under a contract between such user and a natural gas pipeline shall be prohibited from using such natural gas for outdoor lighting (unless an exemption has been obtained under subsection (c))—

[(A) effective 180 days after the date such final rule takes effect, if the industrial user was using natural gas for outdoor lighting on the date of the enactment of this Act; or

[(B) beginning on the date such final rule takes effect, if such industrial user was not so using natural gas on such date.

[(c) EXEMPTIONS.—(1) The Secretary shall, by order—

[(A) exempt from the prohibition under subsection (a) the installation of a replacement lighting fixture for any memorial light or light of historical significance, and

[(B) permanently exempt from a prohibition under subsection (b) the use of natural gas in any memorial light or light of historial significance,

if a petition for such exemption is made by a Federal, State, or local government agency or by any appropriate historical association.

[(2) The Secretary shall, by order—

[(A) exempt from the prohibition under subsection (a), upon a petition therefor, the installation of a replacement lighting fixture for any natural gas outdoor lighting, and

[(B) permanently exempt from a prohibition under subsection (b), upon a petition therefor, use of natural gas for outdoor lighting,

which is used for commercial purposes, which is of a traditional nature, and which conforms with the cultural or architectural style of the area in which such light is located.

[(3) The Secretary shall, by order, exempt any local distribution company or industrial user described in subsection (b)(2), from the rule required to be prescribed under subsection (b) concerning the continuation of such service in effect on the date of the enactment of this Act upon the filing of a petition therefor by such pipeline or company, or by any other interested person. Such exemption shall be for such period as, and to the extent that, the Secretary finds—

[(A) such exemption is necessary to protect the safety of persons or property;

[(B) such exemption is necessary to permit the installation of substitute lighting where no adequate outdoor lighting (other than that using natural gas) exists on the date of the enactment of this Act;

[(C) compliance with such rule would entail substantial expense and would not be cost justified; or

[(D) the issuance of the exemption is in the public interest and is consistent with the purposes of this Act.

[(4) Determinations on any petition for an exemption under this section shall be made under criteria which the Secretary shall establish by rule, which rule shall be prescribed not later than 180 days after the effective date of this Act.

[(d) PROCEDURES.—Rules and orders under this section shall be made in accordance with the provisions of section 553 of title 5, United States Code, except that determinations on any petition for exemption under this section shall be made only after interested persons have been afforded an opportunity for a public hearing. Under rules prescribed by the Secretary, the Secretary may stay the application of any prohibition under subsection (b) applicable to any person pending the resolution of any petition for an exemption for such person.

[(e) AUTHORITY MAY BE DELEGATED TO STATES.—(1) Under regulations prescribed by the Secretary, the responsibility and authority of the Secretary with regard to outdoor lighting under this section may be delegated to the appropriate regulatory authority of a State if he determines that such delegation would be consistent with the purposes of this section.

[(2) Any delegation under paragraph (1) shall be on terms and conditions prescribed by the Secretary and may be rescinded by the Secretary at any time by notifying the State authority of such rescission.

[(3) Any State authority to which the Secretary has delegated authority under this subsection shall prepare and transmit reports to the Secretary on a periodic basis (as determined by the Secretary) on actions taken to carry out the purposes of this section.

[(f)(1) For the purpose of discouraging the use of natural gas for outdoor lighting, each local distribution company which is subject to subsection (a) or (b) shall, in accordance with rules promulgated by the Secretary—

[(A) establish a reasonable and simple method, as determined by each such company, by which the company shall periodically inform its customers about the amount of natural gas consumed by outdoor lighting and the annual cost of such gas for such lighting; and

[(B) report to the Secretary the method established under subparagraph (A).

A company may establish a method which provides for reporting such information on the basis of estimates where actual information is not readily available.

[(2) The Secretary shall propose the rules referred to in paragraph (1) as promptly as possible after the date of the enactment of this subsection, and such rules shall take effect not later than the ninetieth day after they are proposed. In promulgating such rules, the Secretary shall, to the greatest extent feasible, consult with the appropriate regulatory authority of the States and the local distribution companies who will be subject to the rules.

[(g) DEFINITIONS.—As used in this section—

[(1) The term "outdoor lighting" means lighting by any stationary source which is not located inside any building.

[(2) The term "pipeline company" means any person engaged in the business of transporting natural gas by pipeline other than as a local distribution company.

[(3) The term "local distribution company" means any person engaged in the business of transportation and local distribution of natural gas and the sale of natural gas for ultimate consumption.

[(4) The term "residence" means any single or multiple family dwelling unit, including commonly held areas associated with any such unit.]

Sec. 403. CONVERSATION IN FEDERAL FACILITIES, CONTRACTS AND FINANCIAL ASSISTANCE PROGRAMS.

(a) FEDERAL FACILITIES.—(1) Each Federal agency owning or operating any electric powerplant[, major fuel-burning installation, or other unit] shall comply with any prohibition, term, condition, or other substantial or procedural requirement under this Act, to the same extent as would be the case if such powerplant[, installation, or unit] were owned or operated by a nongovernmental person.

(2) The President may, by order, exempt from the application of paragraph (1) any powerplant[, installation, or other unit] owned or operated by any Federal Agency, if the President determines that—

(A) such use is in the paramount interest of the United States and that the powerplant[, installation, or other unit] involved is a component of or is used solely in connection with any weaponry, equipment, aircraft, vessels, vehicles or other classes or categories of property which—

(i) are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State; and

(ii) are uniquely military in nature; or

(B) there is a lack of appropriation for such use but only if the President specifically requested such appropriations as a part of the budgetary process and the Congress failed to make available such requested appropriation.

Such order shall not take effect until 60 days after copy of such order has been transmitted to each House of the Congress. The President shall review each such determination every 2 years and submit a report to the Congress on the results of such review.

[Any powerplant, installation, or other unit permitted to use natural gas or petroleum under an exemption under this paragraph shall establish and carry out effective fuel conservation measures, as determined by the Secretary.]

[(3) Any powerplant, installation, or unit owned or operated by any such Federal agency shall be entitled to any exemption by the Secretary to the same extent, in the same manner, and under the same terms and conditions as would apply if it were owned or operated by a nongovernmental person.]

(b) FEDERAL CONTRACTS AND FINANCIAL ASSISTANCE.—(1) In order to implement the purposes of this Act, the President shall, not later than 30 days after the effective date of this Act, issue an order—

(A) requiring each Federal Agency which is authorized to extend Federal assistance by way of grant, loan, contract, or other form of financial assistance, to promptly effectuate the purposes of this Act relating to the conservation of petroleum and natural gas, by rule, in such contracting or assistance activities within 180 days after issuance of such order, and

(B) setting forth procedures, sanctions, penalties, and such other provisions as the President determines necessary to carry out such requirement effectively including a requirement that each agency annually transmit to the President, and make available to the public, a report on the actions taken and to be taken to implement such order.

(2) The President may exempt by order any specific grant, loan, contract, or other form of financial assistance from all or part of the provisions of this subsection if he determines such exemption is in the national interest. The President shall notify the Congress in writing of such exemption at least 60 days before it is effective.

(3) The President or any Federal agency may not use the authority granted under paragraph (1) to require compliance, including the use of coal, by any person or facility with any prohibition under other sections of this Act if such person or facility has been specifically determined by the Secretary as subject to such prohibition or has been exempted from the application of such prohibition.

(c) ANNUAL REPORT.—The President shall annually submit a detailed report to each House of the Congress on the actions taken by the President and each Federal agency to implement this section, including the progress and problems associated with implementation of this section.

Sec. 404. EMERGENCY AUTHORITIES.

(a) COAL ALLOCATION AUTHORITY.—(1) If the President—

(A) declares a severe energy supply interruption, as defined in section 3(8) of the Energy Policy and Conservation Act, or

(B) finds, and publishes such finding, that a national or regional fuel supply shortage exists or may exist which the President determines—

(i) is, or is likely to be, of significant scope and duration, and of an emergency nature;

(ii) causes, or may cause, major adverse impact on public health, safety, or welfare or on the economy; and

(iii) results, or is likely to result, from an interruption in the supply of coal or from sabotage, or an act of God;

the President may, by order, allocate coal (and require the transportation thereof) for the use of any electric powerplant or major fuel-burning installation, in accordance with such terms and conditions as he may prescribe, to insure reliability of electric service or prevent unemployment, or protect public health, safety, or welfare.

(2) For purpoess of this subsection, the term "coal" means anthracite and bituminous coal and lignite (but does not mean any fuel derivative thereof).

(b) EMERGENCY PROHIBITION ON USE OF NATURAL GAS OR PETROLEUM.—If the President declares a severe energy supply interruption, as defined in section 3(8) of the Energy Policy and Conservation Act, the President may, by order, prohibit any electric powerplant or major fuel-burning installation from using natural gas or petroleum, or both, as a primary energy source for the duration of such interruption. Notwithstanding any other provision of this section, any suspension of emission limitations or other requirements of applicable implementation plans, as defined in section 110(d) of the Clean Air Act, required by such prohibition shall be issued only in accordance with section 110(f) of the Clean Air Act.

(c) EMERGENCY STAYS.—The President may, by order, stay the application of any provison of this Act, or any rule or order thereunder, applicable to any [new or] existing electric powerplant, if the President finds, and publishes such finding, that an emergency exists, due to national, regional, or systemwide shortages of coal or other alternate fuels, or disruption of transportation facilities, which emergency is likely to affect reliability of service of any such electric powerplant.

(d) DURATION OF EMERGENCY ORDERS.—(1) Except as provided in paragraph (3), any order issued by the President under this section shall not be effective for longer than the duration of the interruption or emergency, or 90 days, whichever is less.

(2) Any such order may be extended by a subsequent order which the President shall transmit to the Congress in accordance with section 551 of the Energy Policy and Conservation Act. Such order shall be suject to congressional review pursuant to such section.

(3) Notwithstanding paragraph (1), the effectiveness of any order issued under this section shall not terminate under this subsection during the 15-calendar-day period during which any such subsequent order described in paragraph (2) is subject to congressional review under section 551 of the Energy Policy and Conservation Act.

(4) For purposes of this subsection, the provisions of this subsection supersede the provisions of title II of the Act of September 14, 1976 (Public Law 94-412; 50 U.S.C. 1621 and following).

(e) DELEGATION OF AUTHORITY PROHIBITED.—The authority of the President to issue any order under this section may not be delegated. This subsection shall not be construed to prevent the President from directing any Federal agency to issue rules or regulations or take such other action, consistent with this section, in the implementation of such order.

(f) PUBLICATION AND REPORTS TO CONGRESS OF ORDERS.—Any order isseud under this section shall be published in the Federal Register. To the greatest extent practicable, the President shall, before issuing any order under this section, but in no event later

than 5 days after issuing such order, report to the Congress of his intention to issue such order and state his reasons therefor.

[(g) EMERGENCY USES OF NATIONAL GAS OR PETROLEUM.—(1) During a temporary emergency condition (other than emergency conditions provided for under section 103(a)(15)), any person operation a peak-load powerplant or a major fuel-burning installation may, under rules prescribed by the Secretary, use natural gas or petroleum as a primary energy source in such powerplant or installation, notwithstanding any prohibition otherwise imposed by or pursuant to this Act, if—

[(A) such person notifies the Secretary within 24 hours after commencing such use; and

[(B) the Secretary has not notified such person that in his judgment the emergency condition does not exist or does not warrent the use of natural gas or petroleum involved.

[(2) Within 90 days after the effective date of this Act, the Seretary shall, by rule prescribe the form and content of such notices and the conditions which may consitute a temporary emergency.

[(3) Hours of operation allowed under paragraph (1) shall not be included in the peakload powerplant's operation hours for the purposes of the penalties in section 723(b).

[Sec. 405. AUTHORITY TO RESTRICT INCREASED USES OF PETROLEUM BY EXISTING POWERPLANTS.

[The Secretary shall, by rule, require that, in the case of any exsiting electric powerplant which during calendar year 1977 uses coal or another alternate fuel as a primary energy source, petroleum may not be used in such powerplant as a primary energy source in excess of the quantities of petroleum used in such powerplant as a primary energy source during such year unless a permit is issued by the Secretary authorizing such increased use of petroleum. Such permit shall be issued if—

[(1) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary (A) that the powerplant cannot comply with the requirements of the Clean Air Act, including any applicable implementation plan, as defined in section 110(d) of the Clean Air Act, without the issuance of such permit and (B) the petitioner has established the duration of the need for increased petroleum to comply with such plan; and

[(2) the appropriate State regulatory authority has certified to the Secretary that the increased use of petroleum by such power-plant is necessary to prevent impairment of reliability of service.

Such permit shall be issued only for such period as the Secretary determines necessary under paragraph (1) or (2) for such increased use of petroleum.]

TITLE V—SYSTEM COMPLIANCE OPTION

Sec. 501. ELECTRIC UTILITY SYSTEM COMPLIANCE OPTION.

(a) GENERAL RULE.—Existing electric powerplants owned or operated by an electric utility shall be considered in compliance with any prohibition under title III relating to the use of natural gas if

there is in effect a plan of system compliance for such utility approved by the Secretary under subsection (b). No exemption under title III relating to the use of natural gas shall be available for any powerplant which is, or has ever been, covered by such an approved plan (other than an exemption under section 312(e)).

(b) REQUIREMENTS FOR PLAN APPROVAL.—The Secretary shall, by order, approve any plan of system compliance submitted by an electric utility to the Secretary before January 1, 1980, if the Secretary finds that such plan—

(1) identifies all powerplants owned or operated by such electric utility and indicates which of the powerplants—

(A) would be subject to, or could be subject to, prohibitions under title III relating to the use of natural gas if such plan were not approved; and

(B) of those so indicated in subparagraph (A), would be, or in the opinion of such electric utility would be likely to be entitled to an exemption under title III relating to the use of natural gas if such plan were not approved;

(2) contains a commitment that, if such plan is approved, no new electric powerplant which is or is to be a base load powerplant owned or operated by such utility shall use natural gas or petroleum as its primary energy source (whether or not such powerplant could qualify for an exemption under title II for such use);

(3) contains a commitment (including a schedule for an orderly progression in satisfying such commitment) that, if such plan is approved, all existing electric powerplants owned or operated by such utility—

(A) subject to subparagraph (B), on and after January 1, 1995, would not use natural gas as a primary energy source, except in the case of an intermediate load powerplant or a peakload powerplant, and then only in accordance with rules prescribed by the Secretary; and

(B) on and after January 1, 2000, would not use natural gas as a primary energy source except in the case of a temporary extension obtained under subsection (d);

(4) contains a commitment that, if such plan is approved, natural gas will not, on and after January 1, 1990, be used by powerplants owned or operated by such utility in excess of—

(A) 20 percent (or such higher percentage as may be allowed under subsection (d)(2)) of the electric utility's base period usage of natural gas, or, if lower,

(B) the electric utility's minimum peakload requirement for the calendar year;

(5) contains a commitment that, if such plan is approved, the natural gas used by such utility will be obtained only under—

(A) a contract entered into before the date of the enactment of this Act (other than under an extension or renewal of such contract occurring on or after such date); or

(B) a contract entered into on or after such date, or an extension or renewal occurring on or after such date of a contract entered into before such date, but only if such contract, extension, or renewal has been approved by the Secretary under subsection (g); and

(6) contains a 10-year forecast of such utility's demand for electricity, a 10-year construction forecast, and a 10-year financial plan, which provide a reasonable basis for concluding that the commitments in such plan will be carried out.

Approval of the Secretary under this subsection shall be conditioned on the utility involved updating on an annual basis the information contained in such plan to the extent provided under rules prescribed by the Secretary.

(c) PLAN REVISION.—A plan under subsection (b) may be revised but only if the Secretary, by order, approves such revision.

(d) EXTENSION FOR EMERGENCY OR PEAKLOAD PURPOSES.—(1) For purposes of subsection (b)(3)(B), the Secretary may extend the date specified therein for not more than 5 years with respect to the use of natural gas by any powerplant if it is demonstrated that such use of natural gas is to be—

(A) for emergency purposes consistent with section 312(e), or

(B) for peakload purposes, consistent with section 312(f).

(2) The Secretary may exempt from the requirements of subsection (b)(4) such quantities of natural gas as would otherwise exceed such requirement if it is demonstrated that such natural gas is used solely for emergency or peakload purposes described in paragraph (1) (A) or (B).

(e) DETERMINATION OF BASE PERIOD USAGE.—(1) For purposes of subsection (b)(4)(A), an electric utility's base period usage of natural gas shall be the sum of—

(A) the quantities of natural gas used in calendar year 1976 by powerplants which are owned or operated by such utility and which were placed in service on or before January 1, 1976; plus

(B) one-half of the quantities used during the first 24 calendar-months after being placed in service by powerplants which are owned or operated by such utility and which were placed in service after January 1, 1976, and before the effective date of this Act.

(2) The Secretary may allow for the substitution of a higher percentage for the 20 percent specified in subparagraph (A) of subsection (b)(4) if he determines that the utility has demonstrated that such higher percentage is necessary—

(A) because of delays which occurred, despite diligent good faith efforts, in the construction of powerplants which use a primary energy source other than natural gas, or

(B) because it would not be feasible for such utility to comply with the requirements of such subsection (b)(4) in the absence of such higher percentage without impairing reliability of service.

(f) DETERMINATION OF MINIMUM PEAKLOAD REQUIREMENT.—For purposes of subsection (b)(4)(B), an electric utility's minimum peakload requirement for any calendar year shall be defined as the total kilowatt hours generated during the calendar year by natural gas on the system of the applicant electric utility company system divided by the aggregate capacity of all the electric powerplants in such system, but not to exceed 1,500 full-load hours per year.

(g) APPROVAL OF NATURAL GAS CONTRACTS.—The Secretary shall approve any contract, or contract extension or renewal, for pur-

poses of applying subsection (b)(5)(B) with respect to any plan, if he determines that the electric utility which submitted such plan has demonstrated that the quantities available under such contract, or extension or renewal, do not exceed those which are necessary to meet the requirements of the powerplants under such plan. The Secretary may not approve any contract, or extension or renewal, which provides for the delivery of such natural gas after December 31, 1999.

(h) TERMS AND CONDITIONS.—Any approval by the Secretary under subsection (b) shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this Act.

TITLE VI—FINANCIAL ASSISTANCE

Sec. 601. ASSISTANCE TO AREAS IMPACTED BY INCREASED COAL OR URANIUM PRODUCTION.

(a) DESIGNATION OF IMPACTED AREAS.—(1) In accordance with such criteria and guidelines as the Secretary of Agriculture shall, by rule, prescribe, the Governor of any State may designate any area within such State for the purposes of this section, if he finds that—

(A) either (i) employment in coal or uranium production development activities in such area has increased for the most recent calendar year by 8 percent or more from the immediately preceding year or (ii) employment in such activities will increase 8 percent or more per year during each of the 3 calendar years beginning after the date of such finding;

(B) such employment increase has required or will require substantial increases in housing or public facilities and services or a combination of both in such area; and

(C) the State and the local government or governments serving such area lack the financial and other resources to meet any such increases in public facilities and services within a reasonable time.

The Secretary of Agriculture shall prescribe a rule containing criteria and guidelines for making a designation under this subsection, after consultation with the Secretary of Labor and the Secretary of Energy, not later than 180 days after the effective date of this Act.

(2) For purposes of paragraph (1)(C), increased revenues, including severance tax revenues, royalties, and similar fees to the State and local governments which are associated with the increase in coal or uranium development activities and which are not prohibited from being used under provisions of law in effect on the date of the enactment of this Act shall be taken into account in determining if a State or local government lacks financial resources.

(3) The Secretary shall, after consultation with the Secretary of Agriculture, approve any designation of an area under paragraph (1) only if—

(A) the Governor of the State making the designation provides the Secretary in writing with the data and information on which such designation was made, together with such addi-

tional information as the Secretary may require to carry out the purposes of this section; and

(B) the Secretary determines that the requirements of subparagraphs (A), (B), and (C) of paragraph (1) have been met.

(b) PLANNING GRANTS.—(1) The Secretary of Agriculture may make a grant to any State in which there is an area designated and approved under subsection (a) for the purposes of developing a plan for such area which shall include determinations of—

(A) the anticipated level of coal or uranium production activities in such area;

(B) the socio-economic impacts which have occurred or which are reasonably projected to occur as a result of the increase in coal or uranium production activities;

(C) the availability and location of resources within such area to meet the increased needs resulting from socio-economic impacts determined under subparagraph (B) (such as any increased need for housing, or public facilities and services); and

(D) the nature and expense of measures necessary to meet within a reasonable time the increased needs resulting from such impact for which there are no resources reasonably available other than under this section.

(2)(A) Any grant for developing a plan under this subsection shall be for an amount equal to 100 percent of the costs of such plan, as determined by the Secretary of Agriculture.

(B) The aggregate amount granted under this subsection in any fiscal year may not exceed 10 percent of the total amount appropriated for purposes of this section for such year.

(3) The Governor of a State receiving a grant under this subsection for developing a plan shall submit a copy of such plan to the Secretary of Agriculture as soon as practicable after it has been prepared.

(c) LAND ACQUISITION AND DEVELOPMENT GRANTS.—(1) In the case of any real property—

(A) within an area for which a plan meeting the requirements of subsection (b)(1) has been approved;

(B) which is for housing or public facilities determined in such plan as necessary due to an increase in employment due to coal or uranium development activities;

(C) with respect to which the Secretary of Agriculture has determined that the State and the local governments serving such area do not have the financial resources to acquire or the legal authority to acquire by condemnation; and

(D) with respect to which there has been an approval in writing by the Governor of such State that the Secretary of Agriculture exercise his authority under this paragraph;

the Secretary of Agriculture may acquire such real property or interest therein, by purchase, donation, lease, or exchange. Property so acquired shall be transferred to the State under such terms and conditions as the Secretary of Agriculture deems appropriate. Such terms and conditions shall provide for the reimbursement to the Secretary of Agriculture for the fair market value of the property, as determined by the Secretary of Agriculture. The value of any improvement of such property made after such acquisition shall not be taken into account in determining the fair market value of

such property under this subsection. Amounts so received by the Secretary of Agriculture shall be deposited in the Treasury of the United States as miscellaneous receipts.

(2) Any approval by a Governor of a State under paragraph (1)(D) shall constitute a binding commitment of such State to accept the property to be acquired and to provide reimbursement for the amount of the fair market value of such property, as determined under paragraph (1).

(3) The Secretary of Agriculture may acquire property under paragraph (1) by condemnation only if he finds that—

(A) such property is not available by means other than condemnation at a price which does not substantially exceed the fair market value of such property;

(B) other real property is not similarly available which is within the same designated area and which is suitable for the purposes to which the property involved is to be applied; and

(C) the State and the local governments serving such area lack the legal authority to acquire such property by condemnation.

(4)(A) In the case of any real property which meets the requirements of subparagraphs (A), (B), and (C) of paragraph (1), the Secretary of Agriculture may make a grant to the State in which such property is located for the purposes of acquiring such property, and for any site development which is consistent with the plan developed under subsection (b).

(B) In the case of property acquired by the Secretary of Agriculture under paragraph (1) and transferred to the State, the Secretary of Agriculture may make a grant to such unit of government for the purposes of site development which is consistent with such plan.

(C) Grants for real property acquisition or site development or both under this paragraph may not exceed 75 percent of the costs thereof, as determined by the Secretary of Agriculture.

(5) In the selection of real property for acquisition and in such acquisition under this subsection, preference shall be given to real property which the Secretary of Agriculture determines at such time to be unoccupied or previously mined and abandoned.

(6)(A) Property held by the United States in trust for Indians or any Indian tribe may not be acquired by condemnation under this section.

(B) No property within the National Forest System (as defined in section 10 of the Forest and Rangeland Renewable Resources Planning Act of 1974) may be exchanged by the Secretary in any acquisition under paragraph (1).

(d) GENERAL REQUIREMENTS REGARDING ASSISTANCE.—(1) Assistance under this section shall be provided only upon application, which application shall contain such information as the Secretary of Agriculture shall prescribe.

(2) The Secretary of Agriculture may make any grant under this section in whole or in part to the local government or governments serving an area designated and approved under subsection (a), or to a council of local governments which includes one or more local governments serving such area (in lieu of making such **grant solely**

to the State), if he has determined, after consultation with the Governor of the State, that to do so would be appropriate.

(3) The Secretary of Agriculture shall prescribe, by rule, criteria for the allocation of assistance under this section. Such criteria shall give due weight to the magnitude of the employment increase involved, the financial resources of the designated area, and the ratio of the financial burden on the area to the resources available to such area.

(4) Assistance under this section shall be provided only if the Secretary of Agriculture is satisfied that—

(A) the amounts expended by the State and the local governments involved for the same purposes for which such assistance is provided will not be reduced; and

(B) the amount of such assistance does not reflect any amount for which other Federal financial assistance is provided or on proper application would be provided.

(e) DEFINITIONS.—For the purposes of this section—

(1) The term "coal or uranium development activities" means the production, processing, or transportation of coal or uranium.

(2) The term "site development" means necessary off-site improvements, such as the construction of sewer and water connections, construction of access roads, and appropriate site restoration, but does not include any portion of the construction of housing or public facilities.

(f) REPORTS.—Any person regularly engaged in any coal or uranium development activity within an area designated and approved under subsection (a) shall prepare and transmit a report to the Secretary of Energy within 90 days after a written request to such person by the Governor of the State in which such area is located. Such report shall include—

(1) projected employment levels for such activity by such person within such area during each of the following 3 calendar years;

(2) the projected increase in employees in such area to engage in such activity during each of such calendar years;

(3) the projected quantity of coal (or uranium) to be produced, processed, or transported by such persn during each of such calendar years; and

(4) actions such companies plan to take or are taking to provide needed housing and other facilities for their employees directly or by providing funds to the States or local communities for this purpose.

Copies of the report shall be provided to the Secretary of Energy and the Secretary shall, subject to the provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974, provide the report to the Secretary of Agriculture, the Governor, and the appropriate county or local officials and make it available for public review.

(g) ADMINISTRATION.—The Secretary of Agriculture shall carry out his responsibilities under this section through the Farmers House Administration and such other agencies within the Department of Agriculture as he may determine appropriate.

(h) APPROPRIATIONS AUTHORIZATION.—(1) There is hereby authorized to be appropriated to the Secretary of Energy for purposes of this section, $60,000,000 for fiscal year 1979 and $120,000,000 for fiscal year 1980. The Secretary of Energy and the Secretary of Agriculture shall enter into an agreement for the allocation of funds appropriated pursuant to this section for carrying out their respective responsibilities under this section, including the amounts for personnel and administrative costs, and upon such agreement, the Secretary of Energy shall transfer to the Secretary of Agriculture amounts determined under that agreement.

(i) PROTECTION FROM CERTAIN HAZARDOUS ACTIONS.—Federal agencies having responsibilities concerning the health and safety of any person working in any coal, uranium, metal, or nonmetallic mine regulated by any Federal agency, shall interpret and utilize their authorities fully and promptly, including the promulgation of standards and regulations, to protect existing and future housing, property, persons, and public facilities located adjacent to or near active and abandoned coal, uranium, metal, and nonmetallic mines from actions occurring at such activities that pose a hazard to such property or persons.

(j) REORGANIZATION.—The authority of the Secretary of Agriculture and the authority of the Secretary of Energy under this section may not be transferred to any other Secretary or to any other Federal agency under chapter 9 of title 5, United States Code, or under any other provision of law, other than under specific provisions of a law enacted after the date of the enactment of this Act. The preceding provisions of this subsection shall not preclude either Secretary from delegating any such authority to any officer, employee, or entity within such Secretary's department.

Sec. 602. LOANS TO ASSIST POWERPLANT ACQUISITIONS OF AIR POLLUTION CONTROL EQUIPMENT.

(a) AUTHORITY TO MAKE LOANS.—The Secretary may, in accordance with the provisions of this section and such rules and regulations as he shall prescribe, make a loan (and may make a commitment to loan) to any person who owns or operates any existing electric powerplant converting to coal or other alternate fuel as its primary energy source after the effective date of this Act for the purpose of financing the purchase and installation of one or more certified air pollution control devices for such electric powerplant.

(b) LIMITATIONS AND CONDITIONS.—A loan made under this section shall—

(1) not exceed two-thirds of the cost of purchasing and installing the certified air pollution control devices;

(2) have a maturity date not extending beyond 10 years after the date such loan is made;

(3) bear interest at a rate not less than (A) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield of outstanding Treasury obligations of comparable maturity, plus (B) 1 percent;

(4) be made on the condition of payment to the Secretary of a loan fee in an amount equal to (A) such insurance fee as the Secretary determines is necessary to avoid a Federal revenue loss under this section plus (B) 1 percent of the loan amount; and

(5) be made only if the Secretary finds that—

(A) the financial assistance applied for is not otherwise available from other Federal agencies;

(B) the applicant is unable to obtain sufficient funds on reasonable terms and conditions from any other source;

(C) there is continued reasonable assurance of full repayment of the principal, interest, and fees; and

(D) competition among private entities for the provision of air pollution control devices for electric powerplants using coal as their primary energy source to be assisted under this section will be in no way limited or precluded.

(c) ALLOCATION AND PRIORITIES.—In making loans or commitments to loan pursuant to this seciton, the Secretary shall—

(1) allocate a minimum of 25 percent of available financiasl assistance to existing small municipal and rural powerplants; and

(2) give priority consideration to requests for financial assistance by existing electric powerplants subject to any prohibition under title III (or under section 2 of the Energy Supply and Environmental Coordination Act of 1974).

(d) DEFINITIONS.—For purposes of this section—

(1) The term "certified pollution control device" means a new identifiable device which—

(A) is used, in connection with a powerplant, to abate or control atmospheric pollution by removing, altering, disposing, storing, or preventing the emission of pollutants;

(B) the appropriate State air pollution control agency has certified to the Administrator of the Environmental Protection Agency that such device is needed to meet, and is in conformity with, State requirements for abatement or control of atmospheric pollution or contamination;

(C) the Administrator of the Environmental Protection Agency has certified to the Secretary as not duplicating or displacing existing air pollution control devices with a remaining useful economic life in excess of 2 years and as otherwise being in furtherance of the requirements and purposes of the Clean Air Act;

(D) does not constitute or include a building or a structural component of a building, other than a building used exclusively for the purposes set forth in subparagraph (A); and

(E) the construction of which began after the effective date of this Act.

(2) The term "small municipal or rural cooperative electric powerplant" means an electric generating unit, which—

(A) by design is not capable of consuming fuel at a fuel heat input rate in excess of a rate determined appropriate by the Secretary by rule; and

(B) is owned or operated by a municipality or a rural electric cooperative.

(e) RECORDS.—(1) The Secretary shall require all persons receiving financial assistance under this section to keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of

such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the later of—

(A) the expiration of 3 years after completion of the project or undertaking referred to in subsection (a), or

(B) full repayment of interest and principal on a loan made under this section, occurs,

have access for the purposes of audit, evaluation, examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comptroller General may be related or pertinent to such loan.

(f) DEFAULT.—(1) If there is a default in any payment by the obligor of interest or principal due under a loan entered into by the Secretary under this section and such default has continued for 90 days, the Secretary has the right to demand payment of such unpaid amount, unless the Secretary finds that such default has been remedied, or a satisfactory plan to remedy such default by the obligor has been accepted by the Secretary.

(2) In demanding payment of unpaid interest or principal by the obligor, the Secretary has all rights specified in the loan-related agreements with respect to any security which he held with respect to the loan, including the authority to complete, maintain, operate, lease, sell, or otherwise dispose of any property acquired pursuant to such loan or related agreements.

(3) If there is a default under any loan, the Secretary shall notify the Attorney General who shall take such action against the obligator or other parties liable thereunder as is, in his discretion, necessary to protect the interests of the United States. The holder of such loan shall make available to the United States all records and evidence necessary to prosecute any such suit.

(g) DEPOSIT OF RECEIPTS.—Amounts received by the Secretary as principal, interest, fees, proceeds from security acquired following default, or other amounts received by the Secretary in connection with loans made under this section shall be paid into the Treasury of the United States as miscellaneous receipts.

(h) AUTHORIZATION OF APPROPRIATION.—There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this section, but not to exceed $400,000,000 for fiscal year 1979 and $400,000,000 for fiscal year 1980. Authority granted to the Secretary under subsection (a) may be exercised only to the extent as may be provided in advance in appropriation Acts.

TITLE VII—ADMINISTRATION AND ENFORCEMENT

Subtitle A—Procedures

Sec. 701. ADMINISTRATIVE PROCEDURES.

(a) GENERAL RULE MAKING.—Except to the extent otherwise provided in this section or other provisions of this Act, rules prescribed under this Act shall be made in accordance with the procedures set forth in section 553 of title 5, United States Code.

(b) NOTICES OF RULES AND ORDERS IMPOSING PROHIBITIONS.—Before the Secretary prescribes any rule or issues any order imposing a prohibition under this Act (other than under section 402), he shall publish such proposed rule or order in the Federal Register, together with a statement of the reasons for such rule or order and, in the case of a rule, a detailed statement of any special circumstances or characteristics required to be taken into account in prescribing such rule. A copy shall be transmitted to the person who operates any such powerplant [or installation] required to be specifically identified in such rule or order.

(c) PETITIONS FOR EXEMPTIONS.—(1) Any petition for an exemption from any prohibition under this Act or for any permit under section 405, shall be filed at such time and shall be in such form as the Secretary shall by rule prescribe. The Secretary, upon receipt of such petition, shall publish a notice thereof in the Federal Register together with a statement of the reasons set forth in such a petition for requesting such exemption or permit, and provide a period of public comment of at least 45 days for written comments thereon. Rules required under this paragraph shall be prescribed not later than 120 days after the date of the enactment of this Act.

(2) The Secretary, upon receipt of such petition, shall notify the appropriate State agencies having primary authority to permit or regulate the cosntruction or operation of the electric powerplant or, where appropriate, major fuel-burning installation which is the subject of such petition, and, to the maximum extent practicable, consult with such agencies.

(3) The Secretary, within 6 months after the period for public comment and hearing applicable to any petition for an exemption or permit, shall issue a final order granting or denying the petition for such exemption or permit, except that the Secretary may extend such period to a specified date if he publishes notice thereof in the Federal Register and includes with such notice a statement of the reasons for such extension.

(4) Any order for the approval of a system compliance plan under section 501, and any petition for such an order, shall be treated for purposes of this title the same as an order (or petition) for an exemption.

(d) PUBLIC COMMENT ON PROHIBITIONS AND EXEMPTIONS.—(1) In the case of any proposed rule or order by the Secretary imposing a prohibition of any petition for any order granting an exemption (or permit) under this Act (other than under section 402), any interested person shall be afforded an opportunity to present oral data, views, and arguments at a public hearing. At such hearing any interested person shall have an opportunity to question—

(A) other interested persons who make oral presentations,

(B) employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order or in the consideration of such petition, and

(C) experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation,

with respect to disputed issues of material fact, except that the Secretary may restrict questioning if he determines that such questioning is duplicative or is not likely to result in a timely and effective resolution of such issues. Any oral or documentary evidence may be received, but the Secretary as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

(2) A rule or order subject to this section may not be issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.

(e) TRANSCRIPT.—A transcript shall be kept of any public hearing made in accordance with this section.

(f) ENVIRONMENTAL PROTECTION AGENCY COMMENT.—A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this Act (other than under section 402 or 404), or a petition for an exemption (or permit) under this Act (other than under section 402 or 404), shall be transmitted by the Secretary to the Administrator of the Environmental Protection Agency and the Secretary shall request such agency to comment thereon within the period provided to the public unless a longer period is provided under the Clean Air Act. In any such case, the Administrator of the Environmental Protection Agency shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d).

(g) FEDERAL TRADE COMMISSION COMMENT.—A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this Act (other than under section 402 or 404) with respect to a major fuel-burning installation or a boiler subject to section 401 or a petition by such installation or boiler for an exemption (or permit) under this Act (other than under section 402 or 404), shall be transmitted by the Secretary to the Federal Trade Commission and the Secretary shall request such Commission to comment thereon within the period provided to the public. In any such case, the Federal Trade Commission shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d).

(h) COORDINATION WITH OTHER PROVISIONS OF LAW.—(1) Except as provided in sections 702(c)(4), 723(d)(5), and 724 of this Act, title V of the Department of Energy Organization Act (42 U.S.C. 7191, et seq.) shall not apply with respect to this Act.

(2) The preceding provisions of this section shall not apply with respect to any exercise of authority under section 404.

(3) The procedures applicable under this Act shall not—

(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this Act (or provisions of law cited herein), or

(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms, referring to this Act, and declaring that such provision supersedes, in whole or in part, the procedures of this Act.

Sec. 702. JUDICIAL REVIEW.

(a) PUBLICATION AND DELAY OF PROHIBITION OR EXEMPTION TO ALLOW FOR REVIEW.—Any final rule or order prescribed by the Secretary imposing a prohibition or granting an exemption (or permit) under this Act shall be published in the Federal Register, and shall not take effect earlier than the 60th calendar day after such rule or order is published.

(b) PUBLICATION OF DENIAL OF EXEMPTION OR PERMIT.—Any final order issued by the Secretary denying any petition for an exemption or a permit under this Act shall be published in the Federal Register, together with the reasons for such action.

(c) JUDICIAL REVIEW.—(1) Any person aggrieved by any final rule or order referred to in subsection (a) or in section 404, or by the denial of a petition for an order granting an exemption (or permit) referred to in subsection (b), may at any time before the 60th day after the date such rule, order, or denial is published under subsection (a) or (b), file a petition with the United States court of appeals for the circuit wherein such person resides, or has his principal place of business, for judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which the rule or order was based as provided in section 2112 of title 28, United States Code.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule, order, or denial in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. No rule or order (or denial thereof) may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule, order, or denial shall be final, subject to review by the Supreme Court of the United States upon certioriari or certification as provided in section 1254 of title 28, United States Code.

(4) Subject to the direction and control of the Attorney General, as provided in section 519 of title 28, United States Code, attorneys appointed by the Secretary may appear for and represent the Secretary in any proceeding instituted under this section in accordance with section 502(c) of the Department of Energy Organization Act.

Subtitle B—Information and Reporting

Sec. 711. INFORMATION.

(a) AUTHORITY OF SECRETARY.—For purposes of carrying out his responsibilities under this Act, the Secretary may require, under the authority of this Act or any other authority administered by him, any person owning, operating or controlling any electric powerplant [or major fuel-burning installation] or any other person otherwise subject to this Act to submit such information and reports of any kind or nature directly to the Secretary necessary to implement the provisions of this Act and insure compliance with the provisions of this Act, and any rule or order thereunder. The

provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 shall apply with respect to information obtained under this section to the same extent and in the same manner as it applies with respect to energy information obtained under section 11 of such Act.

(b) AUTHORITY OF PRESIDENT AND FEDERAL ENERGY REGULATORY COMMISSION.—In the case of responsibilities expressly given by this Act to the President or the Federal Energy Regulatory Commission, subsection (a) shall be applied as if the references to the Secretary were references to the President or the Federal Energy Regulatory Commission, as the case may be.

(c) NATURAL GAS USAGE BY ELECTRIC UTILITIES.—(1) For purposes of section 404(b) and other emergency authorities, the Secretary shall obtain data necessary to determine—

(A) within 6 months after the data of the enactment of this subsection, the total quantities of natural gas used as a primary energy source by each electric utility during calendar year 1977, and

(B) on a semiannual basis, the total quantities of natural gas used as a primary energy source during the previous 6-month period by each electric utility.

(2) The Secretary shall include in each annual report to the Congress under section 806 a summary of information received by the Secretary under this subsection.

Sec. 721. COMPLIANCE REPORT.

(a) GENERALLY.—Any person owning, operating, or proposing to operate one or more existing electric powerplants required to come into compliance with the prohibitions of this Act shall on or before January 1, 1980, and annually thereafter, submit to the Secretary a report identifying all such existing electric powerplants owned or operated by such person. Such report shall—

(1) set forth the anticipated schedule for compliance with the applicable requirements and prohibitions by each such electric powerplant;

(2) indicate proposed or existing contracts or other commitments or good faith negotiations for such contracts or commitments for coal or another alternate fuel, equipment, or combinations thereof, which would enable such powerplant to comply with such prohibitions; and

(3) identify those electric powerplants, if any, for which application for temporary or permanent exemption from the prohibitions of this Act may be filed.

(b) REPORT ON IMPLEMENTATION OF SECTION 808 PLAN.—Any electric utility required to submit a conservation plan under section 808 shall annually submit to the Secretary a report identifying the steps taken during the preceding year to implement such plan.

Subtitle C—Enforcement

Sec. 721. NOTICE OF VIOLATION; OTHER GENERAL PROVISIONS.

(a) NOTICE OF VIOLATION.—(1) Whenever, on the basis of any information available, the Secretary finds that any person is in violation of any provision of this Act, or any rule or order thereunder, the Secretary shall issue notice of such violation. Any notice issued

under this subsection shall be in writing and shall state with reasonable specificity the nature of the violation.

(2) Paragraph (1) shall not be construed to relieve any person of liability under the other provisions of this Act for any act or omission occurring before the issuance of notice.

(b) INDIVIDUAL LIABILITY OF CORPORATE PERSONNEL.—Any individual director, officer, or agent of a corporation who willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of this Act, or any rule or order thereunder, shall be subject to penalties under this section without regard to any penalties to which the corporation may be subject, except that no such individual director, officer, or agent shall be subject to imprisonment udner section 722, unless he also knew of noncompliance by the corporation or had received from the secretary notice of noncompliance by the corporation.

[(c) LIABILITY FOR CERTAIN PEAKLOAD OPERATION.—No person shall be subject to any penalty under this subtitle with respect to the operation of any powerplant in excess of that allowed by an exemption granted on the basis of the operation of such powerplant as a peakload powerplant if it is demonstrated to the Secretary that such operation was necessary to meet peakload demand and that other peakload powerplants within the same system as such powerplant—

[(1) were unavailable for service—

[(A) due to unit or system outages; or

[(B) because operation of such other powerplants would result in their exceeding the hours of operation allowed under an exemption; and

[(2) have not been operated other than to meet peakload demand.]

[(d)] (c) FEDERAL AGENCIES.—The provisions of sections 722 and 723 shall not be construed to apply to any Federal agency or officer or employee thereof acting in his official capacity.

Sec. 722. CRIMINAL PENALTIES.

Any person who willfully violates any provision of this Act (other than section 402), or any rule or order thereunder, shall be subject to a fine of not more than $50,000, or to imprisonment for not more than one year, or both, for each violation.

Sec. 723. CIVIL PENALTIES.

(a) GENERAL CIVIL PENALTY.—Any person who violates any provision of this Act (other than section 402), or rule or order thereunder, shall be subject to a civil penalty, which shall be assessed by the Secretary, of not more than $25,000 for each violation. Each day of violation shall constitute a separate violation.

(b) CIVIL PENALTIES FOR OPERATION OR USE OF FUELS IN EXCESS OF EXEMPTION.—[(1)] In the case of any electric powerplant granted an exemption, any person who operates such powerplant during any 12-calendar-month period in excess of that authorized in such exemption, shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed $10 per barrel of petroleum or $3 per Mcf of natural gas used in operation of such powerplant in excess of that authorized in such exemption.

[(2) Any person operating a major fuel-burning installation granted an exemption which, for any 12-calendar-month period, uses petroleum or natural gas, or both, in excess of that use allowed by such exemption shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed $10 per barrel of petroleum of $3 per Mcf of natural gas which was use in excess of that use allowed by such exemption.

[(c) PENALTIES FOR VIOLATION OF SECTION 402.—(1) Any person who violates any prohibition under subjection (b)(1) of section 402 with respect to providing of natural gas service to any person for use in outdoor lighting shall be subject to a civil penalty, which shall be assessed by the Secretary and which shall not exceed $500 for each outdoor lighting fixture involved.

[(2) Any industrial user who violates prohibition under subsection (b)(2) of section 402 shall be subject to a civil penalty, which shall be assessed by the Secretary and which shall not exceed $500 per day of violation for each outdoor lighting fixture involved which was used by an industrial customer, but not to exceed $5,000 per outdoor lighting fixture.

[(3) The penalties under this subsection shall only apply in the case of a violation by any person who at the time of the violation had knowledge or reasonably should have had knowledge that the action involved was prohibited under section 402.]

[(d)] *(c)* ASSESSMENT.—(1) Before issuing an order assessing a civil penalty against any person under this Act, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28, United States Code, or of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(C) Section 402(d) of the Department of Energy Organization Act shall not apply with respect to the functions of the Secretary under this subsection.

Sec. 724. INJUNCTIONS AND OTHER EQUITABLE RELIEF.

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in acts or practices constituting a viloation of this Act, or any rule or order thereunder, a civil action, may be brought, in accordance with section 502(c) of the Department of Energy Organization Act, in the appropriate district court of the United States to enjoin such acts or practices, and, upon a proper showing, the court shall grant, without bond, mandatory or prohibitive injunctive relief, including interim equitable relief.

Sec. 725. CITIZENS' SUITS.

(a) GENERAL RULE.—Except as otherwise provided in subsection (b), any aggrieved person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, against the Secretary or the head of any Federal agency

which has a responsibility under this Act if there is an alleged failure of the Secretary or such agency head to perform any act or duty under this Act which is not discretionary. The United States district courts shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) NOTICE TO SECRETARY OR AGENCY HEAD.—No action may be commenced under subsection (a) before the 6th calendar day after the date on which the plaintiff has given notice of such action to the Secretary or the agency head involved. Notice under this subsection shall be given in such manner as the Secretary shall prescribe by rule.

(c) AUTHORITY OF SECRETARY TO INTERVENE.—In any action brought under subsection (a), the Secretary, if not a party, may intervene as a matter of right.

(d) COSTS OF LITIGATION.—The court, in issuing any final order in any action brought under subsection (a), may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(e) OTHER REMEDIES TO REMAIN AVAILABLE.—Nothing in this section shall restrict any right which any aggrieved person (or class of aggrieved persons) may have under any statute or common law to seek enforcement of this Act or any rule thereunder, or to seek any other relief (including relief against the Secretary or the agency head involved).

Subtitle D—Preservation of Contractual Rights

Sec. 731. PRESERVATION OF CONTRACTUAL INTEREST.

(a) RIGHT TO TRANSFER CONTRACTUAL INTERESTS.—(1) If any person receives natural gas, the use of which is prohibited by the provisions of [title II or] title III or any rule or order thereunder, and if such natural gas is received pursuant to a contract in effect on April 20, 1977, between such person and any other person, such person receiving such natural gas may transfer all or any portion of such person's contractual interests under such contract and receive consideration from the person to whom such contractual interests are transferred. The consideration authorized by this subsection shall not exceed the maximum consideration established as just compensation under this section.

(2) Any person who would have transported or distributed the natural gas subject to a contract with respect to which contractual interests are transferred pursuant to paragraph (1) shall be entitled to receive just compensation (as determined by the Commission) from the person to whom such contractual interests are transferred.

(b) DETERMINATION OF CONSIDERATION.—(1) The Commission shall, by rule, establish guidelines for the application on a regional or national basis (as may be appropriate) of the criteria specified in subsection (e)(1) to determine the maximum consideration permitted as just compensation under this section.

(2) The person transferring contractual interests pursuant to subsection (a)(1) and the person to whom such interests are transferred may agree on the amount of, or method of determining, the consid-

eration to be paid for such transfer and certify such consideration to the Commission. Except as provided in paragraph (4), such agreed-upon consideration shall not exceed the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1).

(3) In the event the person transferring contractual interests pursuant to subsection (a)(1) and the person to whom such interests are to be transferred fail to agree, under paragraph (2), on the amount of, or method of determining the consideration to be paid for such transfer, the Commission may, at the request of both such persons, prescribe the amount of, or method of determining, such consideration. Upon the request of either such person, the Commission shall make such determination on the record, after an opportunity for agency hearing. In any such latter case, the determination of the Commission shall be binding upon the party requesting that such determination be made on the record of the agency hearing. The consideration prescribed by the Commission shall not exceed the maximum considertion permitted as just compensation under this section. In prescribing the amount of, or method of determining, consideration under this paragraph, to the maximum extent practicable, the Commission shall utilize any liquidated damages provision set forth in the applicable contract, but in no event may the Commission prescribe consideration in excess of the maximum consideration permitted as just compensation under this section.

(4) In the event that the consideration agreed upon under paragraph (2) exceeds the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1), the Commission may approve such agreed-upon consideration if the Commission determines such agreed-upon consideration does not exceed the maximum consideration permitted as just compensation under this section.

(5) If consideration is agreed upon under paragraph (2) and such consideration exceeds the consideration determined by application of the guidelines prescribed under paragraph (1), but does not exceed the maximum consideration permitted as just compensation under this section, the Commission may not require a refund of any portion of the agreed-upon consideration paid with respect to deliveries of natural gas occurring prior to the Commission's action under paragraph (4) approving or disapproving such consideration unless the Commission determines—

(A) such agreed-upon consideration was fraudulently established;

(B) the processing of the request for approval of such agreed-upon consideration under paragraph (4) was willfully delayed by a party to the transfer; or

(C) such agreed-upon consideration exceeds the maximum consideration pemitted as just compensation under this section.

(c) RESTRICTIONS ON TRANSFERS UNENFORCEABLE.—(1) Any provision of any contract, which prohibits any transfer authorized by subsection (a)(1) or terminates such contract on the basis of such transfer shall be unenforceable in any court of the United States and in any court of any State.

(2) No State may enforce any prohibition on any transfer authorized by subsection (a)(1).

(d) CONTRACTUAL OBLIGATION UNAFFECTED.—The person acquiring contractual interest transferred pursuant to subsection (a)(1) shall assume the contractual obligations which the person transferring such contractual interests has under such contract. This subsection shall not relieve the person transferring such contractual interest from any contractual obligation of such person under such contract if such obligation is not performed by the person acquiring such contractual interests.

(e) DEFINITIONS.—For purposes of this section—

(1) The term "just compensation", when used with respect to any transfer of contractual interests authorized by subsection (a)(1), means the maximum amount of, or method of determining, consideration which does not exceed the amount by which—

(A) the reasonable costs (excluding capital costs) incurred, during the remainder of the period of the contract with respect to which contractual interests are transferred under subsection (a)(1), in direct association with the use of a fuel, other than natural gas, as a primary energy source by the applicable existing electric powerplant [or major fuel-burning installation] exceed

(B) the price of natural gas under such contract during such period.

For purposes of subparagraph (A), the reasonable costs associated with the use of a fuel, other than natural gas, as a primary energy source shall include an allowance for the amortization, over the remaining useful life, of the undepreciated value of depreciable assets located on the premises containing such electric powerplant [or major fuel burning installation] which assets were directly associated with the use of natural gas and are not usable in connection with the use of such other fuel.

(2) The term "just compensation", when used with respect to subsection (a)(2), means an amount equal to any loss of revenue, during the remaining period of the contract with respect to which contractual interests are transferred pursuant to subsection (a)(1), to the extent such loss (A) is directly incurred by reason of the discontinuation of the transportation or distribution of natural gas resulting from the transfer of contractual interests pursuant to subsection (a)(1), and (B) is not offset by revenues derived from other transportation or distribution which would not have occurred if such contractual interests had not been transferred.

(3) The term "contractual interests", with respect to a contract described in subsection (a)(1), includes the right to receive natural gas as affected by any applicable curtailment plan filed with the Commission or the appropriate State regulatory authority.

(4) The term "State" means each of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, and any political subdivision of any of the foregoing.

(5) The term "interstate pipeline" means any person engaged in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission under the Natural Gas Act.

(6) The term "Commission" means the Federal Energy Regulatory Commission.

(7) The term "contract", when used with respect to a contract for receipt of natural gas, which contract was in existence on April 20, 1977, does not include any renewal or extension occurring after such date unless such renewal or extension occurs pursuant to the exercise of an option by the person receiving natural gas under such contract.

(f) COORDINATION WITH THE NATURAL GAS ACT.—(1) Consideration paid by any interstate pipeline pursuant to this section shall be deemed just and reasonable for purposes of sections 4, 5, and 7 of the Natural Gas Act. The Commission shall not deny a pass-through by such interstate pipeline of such consideration based upon the amount of such consideration paid pursuant to this section.

(2) No person shall be subject to the jurisdiction of the Commission under the Natural Gas Act or to regulation as a common carrier under any provision of Federal or State law solely by reason of making any sale, or engaging in any transportation, of natural gas with respect to which the transfer of contractual interests is authorized under subsection (a)(1).

(3) Nothing in this section shall exempt from the jurisdiction of the Commission under the Natural Gas Act any transportation in interstate commerce of natural gas, any sale in interstate commerce for resale of natural gas, or any person engaged in such transportation or such sale to the extent such transportation, sale or person is subject to the jurisdiction of the Commission under such Act without regard to the transfer of contractual interests under subsection (a)(1).

(4) Nothing in this section shall exempt any person from any obligation to obtain a certificate of public convenience and necessity for the transportation by an interstate pipeline of natural gas with respect to which the transfer of contractual interests is authorized under subsection (a)(1). The Commission shall not deny such a certificate for the transportation in interstate commerce of natural gas based upon the amount of consideration paid pursuant to this section.

(g) VOLUME LIMITATION.—No supplier of natural gas under any contract, with respect to which contractual interests have been transferred under subsection (a)(1), shall be required to supply natural gas during any relevant period in volume amounts which exceed the lesser of—

(1) the volume determined by reference to the maximum delivery obligations specified in such contract;

(2) the volume which such supplier would have been required to supply, under the curtailment plan in effect for such supplier, to the person, who transferred contractual interests under subsection (a)(1), if no such transfer had occurred;

(3) the volume which would have been delivered, or for which payment would have been made, pursuant to such con-

tract but for the prohibition on the use of such natural gas under [title II or] title III of this Act or any rule or order thereunder; and

(4) the volume actually delivered or for which payment would have been made pursuant to such contract during the 12-calendar-month period ending immediately before such transfer of contractual interests pursuant to this section.

(h) JUDICIAL REVIEW.—Any action by the Commission under this section is subject to judicial review in accordance with chapter 7 of title 5, United States Code.

Subtitle E—Studies

Sec. 741. NATIONAL COAL POLICY STUDY.

(a) STUDY.—The President, acting through the Secretary and the Administrator of the Environmental Protection Agency, shall make a full and complete investigation and study of the alternative national uses of coal available in the United States to meet the Nation's energy requirements consistent with national policies for the protection and enhancements of the quality of the environment and for economic recovery and full employment. In particular the study should identify and evaluate—

(1) current and prospective coal requirements of the United States;

(2) current and prospective voluntary and mandatory energy conservation measures and their potential for reduction of the United States coal requirements;

(3) current and prospective coal resource production, transportation, conversion, and utilization requirements;

(4) the extent and adequacy of coal research, development, and demonstration programs being carried out by Federal, State, local, and nongovernmental entities (including financial resources, manpower, and statutory authority);

(5) programs for the development of coal mining technologies which increase coal production and utilization while protecting the health and safety of coal miners;

(6) alternative strategies for meeting anticipated United States coal requirements, consistent with achieving other national goals, including national security and environmental protection;

(7) existing and prospective governmental policies and laws affecting the coal industry with the view of determining what, if any, changes in and implementation of such policies and laws may be advisable in order to consolidate, coordinate, and provide an effective and equitable national energy policy consistent with other national policies; and

(8) the most efficient use of the Nation's coal resources considering economic (including capital and consumer costs, and balance of payments), social (including employment), environmental, technological, national defense, and other aspects.

(b) REPORT.—Within 18 months after the effective date of this Act, the President shall submit to the Congress a report with respect to the studies and investigations, together with findings and recommendations in order that the Congress may have such infor-

mation in a timely fashion. Such report shall include the President's determinations and recommendations with respect to—

(1) the Nation's projected coal needs nationally and regionally, for the next 2 decades with particular reference to electric power.

(2) the coal resources available or which must be developed to meet those needs, including, as applicable, the programs for research, development, and demonstration necessary to provide technological advances which may greatly enhance the Nation's ability to efficiently and economically utilize its fuel resources, consistent with applicable environmental requirements;

(3) the air, water, and other pollution created by coal requirements, including any programs to overcome promptly and efficiently any technological or economic barriers to the elimination of such pollution.

(4) the existing policies and programs of the Federal government and of State and local governments, which have any significant impact on the availability, production or efficient and economic utilization of coal resources and on the ability to meet the Nation's energy needs and environmental requirements; and

(5) the adequacy of various transportation systems, including roads, railroads, and waterways to meet projected increases in coal production and utilization.

Before submitting a report to the Congress under subsection (b), the President shall publish in the Federal Register a notice and summary of the proposed report, make copies of such report available, and accord interested persons an opportunity (of not less than 90 days' duration) to present written comments; and shall make such modifications of such report as he may consider appropriate on the basis of such comments.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Secretary for allocation between the Department of Energy and the Environmental Protection Agency for fiscal years 1979 and 1980, not to exceed $18,000,000, for use in carrying out the purposes of this section.

Sec. 742. COAL INDUSTRY PERFORMANCE AND COMPETITION STUDY.

(a) STUDY.—The Secretary shall make a complete investigation of the performance and competition of the coal industry. The study shall be an interagency effort under the direction of the Secretary and shall include participation by—

(1) the Federal Trade Commission,
(2) the Department of Justice,
(3) the Department of Energy,
(4) the Federal Energy Regulatory Commission,
(5) the Department of the Interior,
(6) the Department of Transportation,
(7) the Department of Commerce,
(8) the Department of Labor,
(9) the Department of State,
(10) the Department of the Treasury,
(11) the Interstate Commerce Commission,
(12) the Council on Wage and Price Stability,

(13) the Tennessee Valley Authority, and

(14) the Appalachian Regional Commission.

(b) COVERAGE OF STUDY.—The study shall consider the following element relating to competition:

(1) interests in, or ownership or production of, coal reserves by firms which—

(A) own or have an interest in commodity transportation systems by rail, water, or pipeline,

(B) own or produce oil, natural gas, or uranium, or

(C) use significant amounts of coal in their processes, including electrical generation and steelmaking,

(2) prices, profitability, and levels of concentration in sales of various identifiable submarket structures in the coal industry, including the market for—

(A) steam and metallurgical coal,

(B) low-sulfur coal,

(C) lignite, anthracite, bituminous and subbituminous coal,

(D) spot sales and long-term delivery contracts, and

(E) exports,

(3) overall profitability of coal operations,

(4) capital requirements, sources and uses of funds,

(5) vertical integration of production, cleaning, processing, gasification, liquefaction, transportation, marketing, distribution, combustion, and other phases of the coal fuel cycle,

(6) the effect of interfuel ownership, vertical integration, and market concentration upon innovation, efficiency, prices and profits,

(7) costs of production, transportation, processing, and other components of coal prices for different regions and different types of mines,

(8) responsiveness of coal supply to market demand,

(9) productive capacity,

(10) productivity,

(11) economies and diseconomies of scale,

(12) distribution and flow of executive, managerial, and technical personnel between the various coal producers,

(13) management and directorate interlocks,

(14) relationships to financial institutions,

(15) government-industry relationships, including lease bidding, technology, research, development, demonstration and transfer, and personnel movement,

(16) joint ventures, consortia, and cross-ownership,

(17) identification of the major owners of coal industry stock,

(18) control of patents and technologies,

(19) barriers to greater competition in the market for coal, and

(20) Federal income tax policies.

(c) IMPACTS ON COAL-PRODUCING COUNTIES AND STATES.—The study shall evaluate the economic and social impacts upon coal-producing counties and States of present and prospective land ownership patterns and levels of income, property, severance, and other taxes paid by coal producers.

(d) EXPORT OF METALLURGICAL COAL.—The study shall identify and evaluate national policies toward the export of metallurgical coal as they relate to—

(1) national security,

(2) national energy goals,

(3) balance of payments,

(4) comparative advantage in world trade,

(5) materials policy,

(6) United States and international reserves and resources, and

(7) likely future metallurgical technologies.

(e) REPORTS.—(1) Pursuant to the provisions of the preceding subsections of this section, the Secretary shall submit to the President for transmittal to the Congress such interim reports as he deems advisable and, not later than 18 months after the effective date of this Act, a comprehensive and final report to the Congress containing the findings with respect to such study and investigation. Such report may include such legislative and administrative recommendations as the President deems advisable.

(2) Before submitting a report to the Congress under paragraph (1), the President shall—

(A) publish in the Federal Register a notice and summary of the proposed report and make copies of such report available and afford interested persons an opportunity (of not less than 90 days' duration) to present written comments; and

(B) make such modifications of such report as he may consider appropriate on the basis of such comments.

(f) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated to the Secretary for allocation between the Department of Energy and the other agencies participating in the study under this section for the fiscal years 1979 and 1980, not to exceed $18,000,000 to carry out the provisions of this section.

Sec. 743. IMPACT ON EMPLOYEES.

(a) EVALUATION.—The Secretary shall conduct continuing evaluations of potential loss or shifts of employment which may result from any prohibition under this Act, including, if appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such prohibition. The results of such evaluations and each investigation shall promptly be made available to the public.

(b) INVESTIGATION AND HEARINGS.—On a written request filed with the Secretary by or on behalf of any employee who is discharged or laid off, threatened with discharge or layoff, or otherwise discriminated against, by any person because of the alleged effects of any such prohibition, the Secretary shall investigate the matter and, at the request of any party, shall hold public hearings, after not less than 30 days' notice, at which the Secretary shall require the parties, including any employer involved, to present information on the actual or potential effect of such prohibition on employment and on any alleged employee discharge, layoff, or other discrimination relating to prohibitions and the detailed reasons or justification therefor. At the completion of such investigation, the Secretary shall make findings of fact as to the effect of such prohibition on employment and on the alleged employee dis-

charge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public, the Secretary of Labor shall participate in each such investigation.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require or authorize the Secretary to modify or withdraw any prohibition under this Act.

Sec. 744. STUDY OF COMPLIANCE PROBLEM OF SMALL ELECTRIC UTILITY SYSTEMS.

(a) STUDY.—The Secretary shall conduct a study of the problems of compliance with this Act experienced by those electric utility systems which have a total system generating capacity of less than 2,000 megawatts. The Secretary shall report his findings and his recommendations to the Congress not later than 2 years after the effective date of this Act.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for the fiscal year 1979 not to exceed $500,000 to carry out the provisions of this section.

Sec. 745. EMISSIONS MONITORING.

(a) MONITORING PROGRAM.—The Administrator of the Environmental Protection Agency shall conduct, on a continuing basis, a program of monitoring, to the greatest extent possible and in accordance with the applicable authorities and provisions of the Clean Air Act, the emissions from [new and] existing electric powerplants [and major fuel burning installations] required to use coal or other alternate fuels by reason of this Act or otherwise using coal or other alternate fuels and the effect thereof on the public health, safety, and welfare and the movement of such emissions in the atmosphere and their impact on land and water and other resources and the public health in various regions of the Nation. Such Administrator shall submit an annual report to the Congress on such program. In carrying out his responsibilities under this section, the Administrator of the Environmental Protection Agency shall consult with the other Federal and State agencies concerned with the health effects of such emissions.

(b) APPROPRIATIONS AUTHORIZATIONS.—There is authorized to be appropriated to the Administrator of the Environmental Protection Agency $2,000,000 in fiscal year 1979 for the report required under section 806.

Sec. 746. SOCIOECONOMIC IMPACTS OF INCREASED COAL PRODUCTION AND OTHER ENERGY DEVELOPMENT.

(a) COMMITTEE.—There is hereby established an interagency committee composed of the heads of the Departments of Energy, Commerce, Interior, Transportation, Housing and Urban Development, and Health, Education, and Welfare, the Environmental Protection Agency, the Appalachian Regional Commission, the Farmers' Home Administration, the Office of Management and Budget, and such other Federal agencies as the Secretary shall designate. In carrying out its functions the committee shall consult with the National Governors' Conference and interested persons, organizations, and entities. The chairman of the committee shall be designated by the President. The committee shall terminate 90 days after the submission of its report under subsection (c).

(b) FUNCTIONS OF COMMITTEE.—It is the function of the committee to conduct a study of the socioeconomic impacts of expanded coal production and rapid energy development in general, on States, including local communities, and on the public, including the adequacy of housing and public, recreational, and cultural facilities for coal miners and their families and the effect of any Federal or State laws or regulations on providing such housing and facilities. The committee shall gather data and information on—

(1) the level of assistance provided under this Act and any other programs related to impact assistance,

(2) the timeliness of assistance in meeting impacts caused by Federal decisions on energy policy as well as private sector decisions, and

(3) the obstacles to effective assistance contained in regulations of existing programs related to impact assistance.

(c) REPORT.—Within 1 year after the effective date of this Act, the committee shall submit a detailed report on the results of such study to the Congress, together with any recommendations for additional legislation it may consider appropriate.

Sec. 747. USE OF PETROLEUM AND NATURAL GAS IN COMBUSTORS.

The Secretary shall conduct a detailed study of the uses of petroleum and natural gas as a primary energy source for combustors and installations not subject to the prohibitions of this Act. In conducting such study, the Secretary shall—

(1) identify those categories of major fuel-burning installations in which the substitution of coal or other alternate fuels for petroleum and natural gas is economically and technically feasible, and

(2) determine the estimated savings of natural gas and petroleum expected from such substitution.

Within 1 year after the effective date of this Act, the Secretary shall submit a detailed report on the results of such study to the Congress, together with any recommendations for legislation he may consider appropriate.

Subtitle F—Appropriations Authorization

Sec. 751. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary for fiscal year 1979 $11,900,000, to carry out the provisions of this Act (other than provisions for which an appropriations authorization is otherwise expressly provided in this Act) and section 2 of the Energy Supply and Environmental Coordination Act of 1974.

Subtitle G—Coordination with other Provisions of Law

Sec. 761. EFFECT ON ENVIRONMENTAL REQUIREMENTS.

(a) COMPLIANCE WITH APPLICABLE ENVIRONMENTAL REQUIREMENTS.—Except as provided in section 404, nothing in this Act shall be construed as permitting any existing [or new] electric powerplant [or major fuel-burning installation] to delay or avoid compliance with applicable environmental requirements.

(b) LOCAL ENVIRONMENTAL REQUIREMENTS.—In the case of any [new or] existing facility—

(1) which is subject to any prohibition under this Act, and

(2) which is also subject to any requirement of any local environmental requirement which may be stricter than any Federal or State environmental requirement,

the existence of such local requirement shall not be construed to affect the validity or applicability of such prohibition to such facility[, except to the extent provided under section 212(b) or section 312(b);] and the existence of such prohibition shall not be construed to preempt such local requirement with respect to that facility.

Sec. 762. EFFECT OF ORDERS UNDER SECTION 2 OF ESECA; AMENDMENTS TO EDECA.

(a) EFFECT OF CONSTRUCTION ORDERS.—Any elecrtric powerplant or major fuel-burning installation issued an order pursuant to section 2(c) of the Energy Supply and Environmental Coordination Act of 1974 that is pending on the effective date of this Act shall, notwithstanding the provisions of such section 2(c) or any other provision of this Act, be subject to the provision of this Act as if it were a new electric powerplant or new major fuel-burning installation as the case may be, except that if such order became final before such date, the provisions of title II of this Act shall not apply to such powerplant or installation.

(b) EFFECT OF PROHIBITION ORDERS.—The provisions of titles II and III shall not apply to any powerplant or installation for which an order issued pursuant to section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 before the effective date of this Act is pending or final or which, on review, was held unlawful and set aside on the merits; except that any installation issued such an order under such section 2(a) which is pending on the effective date of this Act may elect to be covered by title II or III (as the case may be) rather than such section 2. Such an election shall be irrevocable and shall be made in such form and manner as the Secretary shall, within 90 days after the date of the enactment of this Act, prescribe. Such an election shall be made not later than 60 days after the date on which the Secretary prescribes the form and manner of making such election.

(c) VALIDITY OF ORDERS.—The preceding provisions of this Act shall not affect the validity of any order issued under subsection (a), or any final order under subsection (c), of section 2 of the Energy Supply and Environmental Coordination Act of 1974, and the authority of the Secretary to amend, repeal, rescind, modify, or enforce any such order, or rules applicable thereto, shall remain in effect notwithstanding any limitation of time otherwise applicable to such authority. Except as provided in this section, the authority of the Secretary under section 2 of such Act shall terminate on the effective date of this Act.

(d) AMENDMENTS TO ESECA.—Section 11(g) of the Energy Supply and Environmental Coordination Act of 1974 is amended—

(1) by striking out paragraph (2), and

(2) in paragraph (1), by striking out "(g)(1)" and inserting in lieu thereof "(g)".

Sec. 763. ENVIRONMENTAL IMPACT STATEMENTS UNDER NEPA.

The following actions are not deemed to be major Federal actions for purposes of section 102(2)(C) of the National Environmental Policy Act of 1969:

(1) the grant or denial of any temporary exemption under this Act for any electric powerplant or major fuel-burning installation;

(2) the grant or denial of any permanent exemption under this Act for any existing electrical powerplant or major fuel-burning installation, other than an exemption—

(A) under section 312(c), relating to cogeneration;

(B) under section 312(l), relating to scheduled equipment outages;

(C) under section 312(b), relating to certain State or local requirements;

(D) under section 312(g), relating to certain intermediate load powerplants; and

(3) the grant or denial of any exemption under this Act for any powerplant or major fuel-burning installation for which the Secretary finds, in consultation with the appropriate Federal agency, and publishes such finding that an environmental impact statement is required in connection with another Federal action and such statement will be prepared by such agency and will reflect the exemption adequately.

Except as provided in the preceding provisions of this section, any determination of what constitutes or does not constitute a major Federal action shall be made under section 102 of the National Environmental Policy Act of 1969.

TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. COAL RESERVES DISCLOSURE.

(a) DISCLOSURE.—Within 2 years after the effective date of this Act, and annually thereafter, the Secretary shall require the disclosure, pursuant to section 11 of the Energy Supply and Environmental Coordination Act of 1974, of the extent, characteristics, and productive capacity of coal reserves, or interest therein, within the United States held by any person or governmental entity, as necessary, and shall publish a summary of such information.

(b) EXEMPTION FOR SMALL RESERVES.—The Secretary may exempt small reserves from the requirements of this section if the Secretary finds that the imposition of the requirements of this section would impose an unreasonable economic burden on such person (or entity) or would not be of significant aid to achievement of the purposes of this Act, and publishes such findings in the Federal Register.

Sec. 802. COAL PREPARATION FACILITIES.

Section 102(c)(4) of the Energy Policy and Conservation Act is amended by adding at the end thereof (42 U.S.C. 6211(c)(4)) the following new sentence: "Such term also includes construction of a coal preparation plant which is designed to reduce the sulfur content of coal produced from any coal mine.".

Sec. 803. RAILROAD REHABILITATION FOR CARRIAGE COAL.

(a) STATEMENT OF PURPOSE.—It is the purpose of this section to facilitate and encourage the use of and conversion to coal as an energy resource in regions and States which can use coal in greater quantity as a substitute for imported petroleum.

(b) AUTHORIZATION.—There is authorized to be appropriated, for deposit in the Railroad Rehabilitation and Improvement Fund established under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822), not more than $100,000,000. The money appropriated to the Railroad Rehabilitation and Improvement Fund pursuant to this subsection shall be expended by the Secretary of Transportation, in the same manner as other money in such Fund, to provide financial assistance to railroads for maintenance, rehabilitation, improvement, and acquisition of equipment and facilities which will be used for the rail transportation of coal to regions or States which can use coal in greater quantities (whether or not such equipment or facilities were designed specifically for such purpose.)

(c) CONFORMING AMENDMENTS.—(1) Section 501(2) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821(2)) is amended by inserting "(except as provided in section 803(a) and (b) of the Powerplant and Industrial Fuel Use Act of 1978)" immediately after "or other features".

(2) Section 502(b) of such Act (45 U.S.C. 882(b)) is amended by inserting at the end thereof the following: "Money appropriated to the Fund under section 803(a) and (b) of the Powerplant and Industrial Fuel Use Act of 1978 shall be used to provide financial assistance of railroads for maintenance, rehabilitation, improvement, and acquisition of equipment and facilities which will be used for the rail transportation of coal to regions or States which can use coal in greater quantities as a substitute for imported petroleum.".

(3) Section 502(f) of such Act (45 U.S.C. 822(f) is amended—

(A) by striking out "and' at the end of paragraph (5) thereof;

(B) by inserting between paragraphs (5) and (6) the following new paragraph:

"(6) funds as may hereafter be appropriated to the Fund as authorized under section 803(a) and (b) of the Powerplant and Industrial Fuel Use Act of 1978; and"; and

(C) by redesignating paragraph (6) as paragraph (7).

(4) Section 502(i) of such Act (45 U.S.C. 822(i)) is amended—

(A) by striking out "and" at the end of paragraph (4) thereof;

(B) by striking out "Treasury" at the end of paragraph (5) and inserting in lieu thereof "Treasury, and"; and

(C) by adding at the end thereof the following new paragraph:

"(6) to carry out the purposes of section 803(a) and (b) of the Powerplant and Industrial Fuel Use Act of 1978".

(5) Section 505(b)(2) of such Act (45 U.S.C. 825) is amended by inserting between the fourth and fifth sentences thereof the following new sentence: "With respect to funds appropriated for financial assistance under this section which were authorized pursuant to section 803(a) and (b) of the Powerplant and Industrial Fuel Use Act of 1978, applications for such funds for the purpose of coal transportation shall be deemed to be for the provision of essential freight services.".

(6) Section 505(d)(3) of such Act (45 U.S.C. 825) is amended—

(A) by striking out in the first sentence "$600,000,000" and inserting in lieu thereof "$700,000,000", and

(B) by striking out in a second sentence "$100,000,000" and inserting in lieu thereof "$150,000,000".

Sec. 804. OFFICE OF RAIL PUBLIC COUNSEL.

Section 27 of the Interstate Commerce Act is amended—

(1) by striking out "and" at the end of paragraph (4)(d),

(2) by striking out the period at the end of paragraph (4)(e) and inserting in lieu thereof "and", and

(3) by inserting after paragraph (4)(e) the following:

"(f) shall present the views of users, as well as the views of the general public and affected communities, and, where appropriate, providers of rail services in proceedings of Federal agencies concerning—

"(1) the impact of energy proposals and actions on rail transportation, and

"(2) whether transportation policies are consistent with National energy policies.".

Sec. 805. RETROACTIVE APPLICATION OF CERTAIN REMEDIAL ORDERS.

"(a) GENERAL RULE.—Section 503 of the Department of Energy Organization Act (42 U.S.C. 7193) is amended by adding at the end thereof the following new subsection;

"(g) With respect to any person whose sole petroleum industry operation relates to the marketing of petroleum products, the Secretary or any person acting on his behalf may not exercise discretion to maintain a civil action (other than an action for injunctive relief) or issue a remedial order against such person for any violation of any rule or regulation if—

"(1) such civil action or order is based on a retroactive application of such rule or regulation or is based upon a retroactive interpretation of such rule or regulation; and

"(2) such person relied in good faith upon rules, regulations, or ruling in effect on the date of the violation interpreting such rules or regulations.".

(b) TECHNICAL CONFORMING AMENDMENTS—In subsections (e) and (f) of such section 503, insert "preceding provisions of" before "this section".

Sec. 806. ANNUAL REPORT.

The Secretary shall submit to the Congress on March 1 of each year a detailed report prepared by him in conjunction with the Administrator of the Environmental Protection Agency of the actions taken under this Act and under section 2 of the Energy Supply and Environmental Coordination Act of 1974 during the preceding calendar year, and the actions to be taken. Each such report shall include data on the effectiveness of this Act in achieving the purposes of this Act.

Sec. 807. SUBMISSION OF REPORTS.

Copies of any report required by this Act to be submitted to the Congress shall be separately submitted to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

Sec. 808. ELECTRIC UTILITY CONSERVATION PLAN.

(a) APPLICABILITY.—An electric utility is subject to this subsection if—

(1) the utility owns or operates any existing electric powerplant in which natural gas was used as a primary energy source at any time during the 1-year period ending on the date of the enactment of this section, and

(2) the utility plans to use natural gas as a primary energy source in any electric powerplant.

(b) SUBMISSION AND APPROVAL OF PLAN.—The Secretary shall require each electric utility subject to this section to—

(1) submit, within 1 year after the date of the enactment of this section, and have approved by the Secretary, a conservation plan which meets the requirements of subsection (c); and

(2) implement such plan during the 5-year period beginning on the date of the initial approval of such plan.

(c) CONTENTS OF PLAN.—(1) Any conservation plan under this section shall set forth means determined by the utility to achieve conservation of electric energy not later than the 5th year after its initial approval at a level, measured on an annual basis, at least equal to 10 percent of the electric energy output of that utility during the most recent 4 calendar quarters ending prior to the date of the enactment of this section which is attributable to natural gas.

(2) The conservation plan shall include—

(A) all activities required for such utility by part 1 of title II of the National Energy Conservation Policy Act;

(B) an effective public information program for conservation; and

(C) such other measures as the utility may consider appropriate.

(3) Any such plan may set forth a program for the use of renewable energy sources (other than hydroelectric power).

(4) Any such plan shall contain procedures to permit the amounts expended by such utility in developing and implementing the plan to be recovered in a manner specified by the appropriate State regulatory authority (or by the utility in the case of a nonregulated utility).

(d) PLAN APPROVAL.—(1) The secretary shall, by order, approve or disapprove any conservation plan proposed under this section by an electric utility within 120 days after its submission. The Secretary shall approve any such proposed plan unless the Secretary finds that such plan does not meet the requirements of subsection (c) and states in writing the reasons therefor.

(2) In the event the Secretary disapproves under paragraph (1) the plan originally submitted, the Secretary shall provide a reasonable period of time for resubmission.

(3) An electric utility may amend any approved plan, except that the plan as amended shall be subject to approval in accordance with paragraph (1).

TITLE IX—EFFECTIVE DATES

Sec. 901. EFFECTIVE DATES.

Unless otherwise provided in this Act, the provisions of this Act shall take effect 180 days after the date of the enactment of this Act, except that the Secretary may issue rules pursuant to such

provisions at any time after such date of enactment, which rules may take effect no earlier than 180 days after such date of enactment.

Sec. 902. INTERIM PETITION AND CONSIDERATION FOR CERTAIN EXEMPTIONS.

(a) EXEMPTIONS IN THE CASE OF CERTAIN POWERPLANTS.—In the case of—

(1) any electric powerplant which, as of April 20, 1977, has received a final decision from the appropriate State agency authorizing the construction of such powerplant, and

(2) any electric powerplant (A) consisting of one or more combined cycle units owned or operated by an electric utility which serves at least 2,000,000 customers and (B) for which an application has been filed for at least one year before the date of the enactment of this Act with the appropriate State agency for authorization to construct such powerplant,

the Secretary may receive, consider, and grant (or deny) any petition for an exemption under title II or III, notwithstanding section 901 or the fact that all rules related to such petition have not been prescribed at the time.

(b) EXEMPTIONS UNDER SECTION 211(d).—The Secretary may receive, consider, and grant (or deny) any petition for any exemption under section 211(d), notwithstanding section 901 or the fact that all rules related to such petition have been prescribed at the time.

NATURAL GAS POLICY ACT OF 1978

AN ACT For the relief of Joe Cortina of Tampa, Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress asembled,

[Private relief matter relating to Joe Cortina not shown.]

* * * * * * *

[TITLE II—INCREMENTAL PRICING

[Sec. 201. Industrial boiler fuel use.
[Sec. 202. Amendment expanding application for other industrial uses.
[Sec. 203. Acquisition costs subject to pasthrough.
[Sec. 204. Method of passthrough.

* * * * * * *

[TITLE II—INCREMENTAL PRICING

[SEC. 201. INDUSTRIAL BOILER FUEL USE.

[(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Commission shall prescribe and make effective (and may from time to time amend) a rule designed to provide for the passthrough, in accordance with the provisions of this title, of the costs of natural gas which are—

[(1) described in section 203; and

[(2) incurred by any interstate pipeline.

[(b) INITIAL APPLICATION.—The requirements of the rule under this section shall apply with respect to the boiler fuel use of natural gas by any industrial boiler fuel facility.

[(c) DEFINITIONS.—For purposes of this section—

[(1) INDUSTRIAL BOILER FUEL FACILITY.—The term "industrial boiler fuel facility" means any industrial facility, as defined by the Commission, which uses natural gas as a boiler fuel and which is not exempt under section 206.

[(2) BOILER FUEL USE.—The term "boiler fuel use" means the use of any fuel for the generation of steam or electricity.

[SEC. 202. AMENDMENT EXPANDING APPLICATION FOR OTHER INDUSTRIAL USES.

[(a) IN GENERAL.—

[(1) COMMISSION RULE.—Not later than 18 months after the date of the enactment of this Act, the Commission shall, by rule, prescribe an amendment to the rule required under section 201 designed to provide for the passthrough, an accordance with the provisions of this title, of the costs of natural gas which are—

[(A) described in section 203; and

[(B) incurred by any interstate pipeline.

[(2) EFFECTIVENESS.—The amendment required by this section, and any amendment to the rule under section 201 which is applicable to facilities to which the amendment required by this section applies (other than a technical or clerical amendment), shall take effect only as provided under subsection (c).

[(b) EXPANDED APPLICATION.—The requirements of the rule under section 201, as amended under subsection (a), shall apply with respect to the industrial use of natural gas (as defined by the Commission in such rule), including boiler fuel use of natural gas (as defined in section 201(C)(2)) by—

[(1) any industrial boiler fuel facility (as defined in section 201(c)(1)); and

[(2) any industrial facility which is within a category defined by the Commission in such amendment as subject thereunder to the requirements of such rule which is not exempt under section 206.

[(c) CONGRESSIONAL REVIEW.—

[(1) IN GENERAL.—Any amendment, the effectiveness of which is subject to this subsection, shall take effect beginning with the first month which begins more than 30 days after the first 30 calendar days of continuous session of Congress (determined in accordance with section 507(b)) after a copy of such amendment has been submitted to each House of the Congress or on such later date, not more than 90 days thereafter, as may be provided in such amendment unless, during such 30-day period of continuous session of Congress, either House of the Congress adopts a resolution of disapproval described in section 507(c)(3) with respect to such amendment.

[(2) AUTHORITY IN THE EVENT OF CONGRESSIONAL DISAPPROVAL.—

[(A) AUTHORITY TO RESUBMIT.—If either House of the Congress adopts a resolution of disapproval with respect to the amendment required under subsection (a) (or any amendment proposed and submitted under this subparagraph), the Commission may thereafter submit to each

House of the Congress an amendment, satisfying the requirements of subsections (a) and (b), which amendment shall take effect as provided under paragraph (1).

[(B) LIMITATION.—The authority of subparagraph (A) may not be exercised—

[(i) earlier than 6 months after the date of the adoption of the most recent resolution of disapproval with respect to any such amendment under this section; and

[(ii) later than 2 years after the date of the adoption of any resolution of disappoval described in section 507(c)(3) with respect to the amendment required under subsection (a).

[SEC. 203. ACQUISITION COSTS SUBJECT TO PASSTHROUGH.

[(a) IN GENERAL.—The following costs shall be subject to the passthrough requirements of the rule prescribed under section 201 (including any amendment under section 202):

[(1) NEW NATURAL GAS.—In the case of new natural gas (as defined in section 102(c)), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs.

[(2) NATURAL GAS UNDER INSTRASTATE ROLLOVER CONTRACT.—In the case of natural gas, delivered under a rollover contract, which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act, any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which such delivery occurs.

[(3) NEW, ONSHORE PRODUCTION WELL GAS.—In the case of natural gas produced from any new, onshore production well (as defined in section 103(c)), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs.

[(4) LNG IMPORTS.—Subject to section 207, in the case of liquefied natural gas imported into the United States, any portion of the first sale acquisition cost of such natural gas (whether or not liquefied when acquired) which exceeds the incremental pricing threshold applicable for the month in which such liquefied natural gas enters the United States.

[(5) NATURAL GAS (OTHER THAN LNG) IMPORTS.—Subject to section 207, in the case of natural gas (other than liquefied natural gas) imported into the United States, any portion of the first sale acquisition cost of such imported natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 102 (relating to new natural gas) for the month in which such natural gas enters the United States, without regard to section 110.

[(6) STRIPPER WELL NATURAL GAS.—In the case of stripper well natural gas (as defined in section 108(b)), any portion of the first sale acquisition cost of such natural gas which exceeds the maximum lawful price, per million Btu's, computed under

section 102 (relating to new natural gas) for the month in which the delivery of such natural gas occurs, without regard to section 110.

[(7) HIGH-COST NATURAL GAS.—In the case of high-cost natural gas (as defined in section 107(c)), any portion of the first sale acquisition cost of such natural gas which exceeds 130 percent of the amount the Commission determines represents—

[(A) the weighted average per barrel cost of Number 2 fuel oil landed in the greater New York City metropolitan area, during an appropriate period preceding the month during which delivery of such natural gas occurs; divided by

[(B) a Btu conversion factor of 5.8 million Btu's per barrel.

[(8) ALASKA NATURAL GAS TRANSPORTATION SYSTEM.—In the case of natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976—

[(A) any portion of the first sale acquisition cost of such natural gas which is not described in subparagraph (B) and which exceeds the maximum lawful price, per million Btu's computed under section 109 (relating to other categories of natural gas) for the month in which delivery of such natural gas occurs, without regard to section 110; and

[(B) any amount paid to any person (other than the producer of such natural gas or an affiliate of such producer) for, or attributable to, any compressing, gathering, processing, treating, liquefying, or transporting such natural gas, or any similar service provided with respect to such natural gas, before the delivery of such natural gas to such system.

[(9) INCREASED STATE SERVERANCE TAXES.—

[(A) INCREASES INCLUDED.—Any portion of the cost of natural gas at any first sale attributable to any increase in the amount of State severance taxes (as defined in section 110(c)) which results from a provision of State law enacted on or after December 1, 1977.

[(B) CERTAIN CHANGES ALLOWED IN METHOD OF COMPUTING TAX.—Subparagraph (A) shall not apply to any increase in State severance taxes resulting from a change in the method of computation of such tax by reason of any provision of State law enacted on or after December 1, 1977, if—

[(i) as of the effective date of such change in method of computation such increase does not result in an increase in the level of such tax, expressed as a percentage of the weighted average first sale price of natural gas produced in such State, above the percentage of such average first sale price which such tax constituted on the day before such effective date; and

[(ii) such provision of law is equally applicable to natural gas produced in such State and delivered in

interstate commerce and to natural gas produced in such State and not so delivered.

[(C) DETERMINATION OF AVERAGE PRICE.—The price to be used in determining the weighted average first sale price for purposes of clause (i) shall be the price paid at the first sale which is used by such State in administering such tax (or an imputed value, if the State uses an event other then a first sale in administering such tax).

[(10) PURCHASES UNDER SECTON 311.—In the case of any sale of natural gas authorized under section 311, any portion of any amount paid, per million Btu's in the acquisition of such natural gas in any such sale which exceeds the incremental pricing threshold applicable for the month in which such acquisition occurs.

[(11) SURCHARGES PAID TO OTHER PIPELINES.—The amount of any surcharge (described in section 204(c)(3)) paid by any interstate pipeline for natural gas acquired by such pipeline from another interstate pipeline.

[(b) FIRST SALE ACQUISITION COST.—

[(1) GENERAL RULE.—For purposes of this section, the first sale acquisition cost of natural gas is—

[(A) the price paid, per million Btu's, in any first sale of such natural gas, in the case of any natural gas produced in the United States and acquired in such first sale; and

[(B) the price paid for such natural gas, per million Btu's at the point of entry to the United States, in the case of natural gas or liquefied natural gas imported into the United States.

Any amount of State severance taxes paid at any first sale shall not be included under subparagraph (A) or (B).

[(2) INTERSTATE PIPELINE PRODUCTION.—For purposes of this section, in the case of any natural gas produced by any interstate pipeline or any affiliate of such pipeline, the first sale acquisition cost of such natural gas shall be determined in accordance with rules prescribed by the Commission.

[(c) INCREMENTAL PRICING THRESHOLD.—For purposes of this section the incremental pricing threshold applicable for any month shall be—

[(1) $1.48 per million Btu's, in the case of March 1978; and

[(2) in the case of any month thereafter, the amount, per million Btu's, determined under this subsection for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor (as defined in section 101(a)) applicable for such month.

[(d) CLASSIFICATION TO BE BASED ON PROVISIONS UNDER WHICH SALE PRICE IS DETERMINED.—In the case of natural gas which is described in more than one paragraph of paragraphs (1) through (8) of subsection (a), the Commission shall, by rule, prescribe the method for determining under which such paragraph the first sale acquisition costs of such natural gas shall be subject to the pass-through requirements of this title, based upon the classification of such natural gas under which the price of such natural gas is determined under title I.

[SEC. 204. METHOD OF PASSTHROUGH.

[(a) ESTABLISHMENT OF INCREMENTAL PRICING ACCOUNT.—The rule required under section 201 (including any amendment under section 202 to such rule) shall provide that any interstate pipeline subject to such rule shall establish and maintain an incremental pricing account (hereinafter in this title referred to as the "account").

[(b) CREDITS TO ACCOUNT.—The rule required under section 201 (including any amendment under section 202 to such rule) shall provide that any costs subject to the passthrough requirements of this title under section 203 (and any carrying charges permitted by the Commission) shall be credited to the account of such pipeline. Amounts so credited may not be allocated to the rates and charges of such pipeline except to the extent provided under this section.

[(c) REQUIREMENT FOR DIRECT PASSTHROUGH.—

[(1) IN GENERAL.—The rule required under section 201 (including any amendment under section 202 to such rule) shall be designed to provide that any amounts in any interstate pipeline's account will be passed through, in accordance with a method prescribed under paragraph (2), by means of a surcharge determined in accordance with a method prescribed under paragraph (3).

[(2) SURCHARGE PASSTHROUGH.—The rule required under section 201 (including any amendment under section 202) shall provide—

[(A) that any surcharge calculated under paragraph (3) may not be imposed by any interstate pipeline except in accordance with a method prescribed under subparagraph (B); and

[(B) one or more methods for imposing such surcharge on the rates and charges of such pipeline applicable to any volume of natural gas delivered, during the calendar period involved, for industrial use to any incrementally priced industrial facilities served directly by such interstate pipeline and to incrementally priced industrial facilities served indirectly through any other interstate pipeline or any local distribution company.

[(3) SURCHARGE.—

[(A) CALCULATION OF SURCHARGE.—Subject to subparagraphs (B) and (C), the amount of any surcharge imposed by any interstate pipeline under this subsection on deliveries of natural gas during the calendar period involved shall be based on the dollar amount in such pipeline's account at the beginning of such period and on the volume of natural gas delivered directly or indirectly by such pipeline during such period or a preceding calendar period to incrementally priced industrial facilities for industrial use with such adjustments as the Commission determines necessary to carry out the purposes of this title.

[(B) ELIMINATION OR REDUCTION OF SURCHARGE APPLICABLE TO A FACILITY.—The rule under section 201 (including any amendment under section 202 to such rule) shall provide one or more methods which have the effect of eliminating or reducing the amount of the surcharge deter-

mined under subparagraph (A) to be passed through under paragraph (2) with respect to volumes of natural gas to be delivered directly or indirectly to any incrementally priced industrial facility for industrial use to the extent that such surcharge in the absence of such elimination or reduction, would cause the rates and charges, per million Btu's, paid for such volumes of natural gas by that incrementally priced industrial facility to exceed the appropriate alternative fuel cost.

[(C) INCREASE IN GENERAL SURCHARGE TO REFLECT AN ADJUSTMENT UNDER SUBPARAGRAPH (B).—The rule under section 201 (including any amendment under section 202 to such rule) shall provide one or more methods by which, in any case in which the surcharge is eliminated or reduced under subparagraph (5) with respect to certain deliveries of natural gas, the interstate pipeline involved may recover from incrementally priced industrial facilities which are not subject to any surcharge elimination or reduction under subparagraph (B) the dollar amount which would have been so passed through if the elimination or reduction under subparagraph (b) had not occurred.

[(D) EXCEPTION.—The methods prescribed under subparagraphs (B) and (C) need not require—

[(i) elimination or reduction under subparagraph (B) of the surcharge with respect to any specific deliveries of natural gas; or

[(ii) the increase under subparagraph (C) of the surcharge generally applicable due to any adjustment under subparagraph (B),

if the Commission determines that to do so would be impracticable or unnecessary to carry out the purposes of this title.

[(4) LOCAL DISTRIBUTION COMPANY DIRECT PURCHASES.—In any case in which a local distribution company directly incurs any first sale acquisition cost subject to the passthrough requirements of this title under section 203 or otherwise directly incur any other cost subject to such requirements under sections 203(a)(8)(B), (9) or (10), such local distribution company shall, with respect to the natural gas involved, be treated for purposes of this title as if it were an interstate pipeline.

[(5) PIPELINES AND LOCAL DISTRIBUTION COMPANIES WITH MORE THAN ONE SOURCE OF NATURAL GAS.—The rule under section 201 (including any amendment under section 202 to such rule) shall prescribe one or more methods for determining, for purposes of paragraph (2)(B) and paragraph (3)(A), the volume of natural gas delivered indirectly by any interstate pipeline to any incrementally priced industrial facility through any other interstate pipeline or local distribution company for purposes of applying subsection (d)(2).

[(d) DEDUCTIONS FROM ACCOUNT.—

[(1) IN GENERAL.—Amounts passed through by any interstate pipeline by means of any surcharge under this section shall be deducted from such pipeline's account.

[(2) NORMAL ALLOCATION TO OCCUR WHERE BTU EQUIVALENCY IS REACHED FOR ALL FACILITIES SERVED BY A PIPELINE.—In any case in which the rates and charges to incrementally priced industrial facilities for natural gas delivered, directly or indirectly, by any interstate pipeline for industrial use to incrementally priced industrial facilities subject to the rule required under section 201 (including any amendment under section 202 to such rule), are not less than the appropriate alternative fuel cost, such rule shall prescribe one or more methods by which amounts in excess of that reasonably necessary to maintain such rates and charges applicable to such industrial facilities at the appropriate alternative fuel cost may be deducted from such pipeline's account and may be allocated to the rates and charges of such interstate pipeline in any manner which would be permitted in the absence of this title.

[(e) DETERMINATION OF ALTERNATIVE FUEL COST.—

[(1) IN GENERAL.—Except as provided in paragraph (2), the appropriate alternative fuel cost for any region (as designated by the Commission) shall be the price, per million Btu's, for Number 2 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel.

[(2) REDUCTION OF APPROPRIATE ALTERNATIVE FUEL COST ALLOWED.—The Commission may, by rule or order, reduce the appropriate alternative fuel cost—

[(A) for any category of incrementally priced industrial facilities, subject to the rule required under section 201 (including any amendment under section 202 to such rule) located within any region and served by the same interstate pipeline; or

[(B) for any specific incrementally priced industrial facility which is subject to such requirements and which is located in any region;

to an amount not lower than the price, per million Btu's, for Number 6 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel, if and to the extent the Commission determines, after an opportunity for written and oral presentation of views, data, and arguments, that such reduction is necessary to prevent increases in the rates and charges to residential, small commercial, and other high-priority users of natural gas which would result from a reallocation of costs caused by the conversion of such industrial facility or facilities from natural gas to other fuels, which conversion is likely to occur if the level of the appropriate alternative fuel cost were not so reduced.

[(f) DETERMINATION OF APPROPRIATE ACCOUNTING PERIOD.—The rule required to be prescribed in section 201 shall specify the appropriate calendar periods used for purposes of such rule (including any amendment under section 202 to such rule).

[(g) INCREMENTALLY PRICED INDUSTRIAL FACILITY DEFINED.—For purposes of this section, the term "incrementally priced industrial facility" means any industrial facility subject to the requirements of the rule under section 201 (including any amendment under section 202 to such rule).

[(h) INDUSTRIAL USE DEFINED.—For purposes of this section, the term "industrial use", when used with respect to natural gas, means the boiler fuel use of natural gas (as defined in section 201(c)(2)) and any other use defined, by rule, by the Commission as an industrial use.

[SEC. 205. LOCAL DISTRIBUTION COMPANY PASSTHROUGH REQUIREMENTS.

[(a) GENERAL RULE.—Any surcharge under this title, paid by any local distribution company with respect to natural gas which is indirectly delivered by any interstate pipeline to incrementally priced industrial facilities which are served by such local distribution company, shall be directly passed through to such industrial facilities.

[(b) PROHIBITION ON OFFSETTING MODIFICATIONS IN RATES AND CHARGES.—Any modification of the method of allocating costs to the rates and charges of such local distribution company in effect on the date of the enactment of this Act is prohibited if a court, in any action brought under section 504(b)(3), determines that such modification has the effect of creating any offset, in the rates and charges for natural gas applicable to any incrementally priced industrial facility served by such company, for the amount of any surcharge under this title paid by such local distribution company with respect to natural gas delivered by any interstate pipeline indirectly to that incrementally priced industrial facility.

[(c) SPECIAL ENFORCEMENT AUTHORITY OF ATTORNEY GENERAL.—In addition to such enforcement authority as may be available to the Commission or any person, the Attorney General may enforce the requirements of this subsection in accordance with the provisions of section 504(b)(3).

[(d) PREEMPTION OF STATE OR LOCAL LAW.—The requirements of this title shall preempt and supersede any provision of State or local law to the extent such provision of law would preclude the passthrough of any surcharge under this title or prevent the application of the requirements of this section.

[(e) STATE COMMISSION DEFINED.—For the purposes of this subsection, the term "State commission" means the State, political subdivision, or an agency of either, having jurisdiction with respect to the rates and charges of any local distribution company.

[SEC. 206. EXEMPTIONS.

[(a) SMALL EXISTING INDUSTRIAL BOILER FUEL USERS.—

[(1) INTERIM EXEMPTION.—During the period preceding the effective date of any permanent exemption under paragraph (2), the rule required under section 201 shall not apply with respect to any boiler fuel use of natural gas by any industrial boiler fuel facility in existence on the date of the enactment of this Act if such use of natural gas by such facility does not exceed an average of 300 Mcf per day during any month of a base period determined appropriate by the Commission.

[(2) PERMANENT EXEMPTION.—

[(A) GENERAL RULE.—Not later than 18 months after the date of the enactment of this Act, the Commission shall prescribe and make effective a rule providing for the exemption of any small industrial boiler fuel facility from

the rule required under section 201 (including any amendment under section 202 to such rule).

[(B) DEFINITION.—For purposes of this paragraph, the term "small industrial boiler fuel facility" means any industrial boiler fuel facility in existence on the date of enactment of this Act that had an average per day use of natural gas as a boiler fuel during the month of peak use during calendar year 1977 which did not exceed the lesser of—

[(i) 300 Mcf; or

[(ii) such average daily rate of use during a month of peak use as the Commission determines in such rule is necessary to assure that the volume of natural gas estimated by the Commission to have been used for boiler fuel during calendar year 1977 by facilities which are exempted under this paragraph does not exceed 5 percent of the total volume of natural gas estimated by the Commission to have been used for boiler fuel transported by interstate pipelines and used during calendar year 1977 as a boiler fuel.

[(b) AGRICULTURAL USERS OF NATURAL GAS.—

[(1) INTERIM EXEMPTION.—During the period preceding the effective date of any permanent exemption under paragraph (2), the rule prescribed under section 201 shall not apply to any facility to the extent of any agricultural use of natural gas.

[(2) EXEMPTION BY RULE.—Not later than 18 months after the date of the enactment of this Act, the Commission shall prescribe and make effective a rule providing for the exemption from the rule required under section 201 (including any amendment under section 202 to such rule) any facility with respect to any agricultural use of natural gas for which the Commission determines that an alternative fuel or feedstock is not—

[(A) economically practicable; or

[(B) reasonably available.

[(3) AGRICULTURAL USE DEFINED.—For purposes of this subsection, the term "agricultural use", when used with respect to natural gas, means the use of natural gas to the extent such use is—

[(A) for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, or crop drying; or

[(B) as a process fuel for feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food.

[(c) SCHOOLS, HOSPITALS, AND CERTAIN OTHER FACILITIES.—The rule under section 201 (including any amendment to such rule under section 202) shall not apply to—

[(1) any school, hospital, or other similar institution;

[(2) the generation of electricity by any electric utility; or

[(3) to the extent provided by the Commission by rule, any qualifying cogenerator (as defined in section 3(18)(B) of Federal Power Act, as amended by the Public Utility Regulatory Policies Act of 1978).

[(d) OTHER EXEMPTIONS.—

[(1) IN GENERAL.—The Commission may, by rule or order, provide for the exemption, in whole or in part, of any other incrementally priced industrial facility or category thereof from the rule prescribed under section 201 (including any amendment under section 202 to such rule).

[(2) CONGRESSIONAL REVIEW.—Any rule which provides for any exemption under this subsection may take effect after the expiration of the first 30 calendar days of continuous session of Congress (determined in accordance with section 507(b)) after a copy of such rule has been submitted to each House of the Congress, unless, during such 30 day period of continuous session of Congress, either House of the Congress adopts a resolution of disapproval described in section 507(c)(3), with respect to such rule.

[SEC. 207. TREATMENT OF CERTAIN IMPORTS.

[(a) CERTAIN LNG IMPORTS.—Except to the extent of a determination otherwise under subsection (c)(1), the provisions of section 203 (a)(4) shall not apply to the passthrough of the first sale acquisition costs of liquefied natural gas (or natural gas vaporized from liquefied natural gas) imported into the United States if—

[(1) the importation of such liquefied natural gas has been authorized under section 3 of the Natural Gas Act on or before May 1, 1978.

[(2) an application for such authority was pending under such section on such date; or

[(3) in connection with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the Department of Energy Organization Act (or any delegation or assignment thereunder), determines that a contract binding on the importer or other substantial financial commitment of the importer has been made on or before such date.

[(b) CERTAIN NATURAL GAS IMPORTS (OTHER THAN LNG).—Subject to subsection (c)(2), the provisions of section 203(a)(5) shall only apply to the passthrough of the first sale acquisition costs of volumes of natural gas (other than liquefied natural gas) imported into the United States which exceeds both—

[(1) the maximum delivery obligations, for the month in which such delivery of such natural gas occurs, which is specified in contracts entered into on or before May 1, 1978, and in effect when such delivery occurs; and

[(2) the volume of natural gas imported into the United States by the interstate pipeline involved during any corresponding period (determined appropriate by the Commission) of calendar year 1977.

[(c) AUTHORITY WITH RESPECT TO INCREMENTAL PRICING OF NATURAL GAS OR LNG IMPORTS.—

[(1) LNG IMPORTS.—Subsection (a)(2) and (3) shall not apply with respect to any liquefied natural gas imports if, in correction with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with

the assignment of functions under the Department of Energy Organization Act, determines that the provisions of section 203(a)(4) shall apply with respect to such liquefied natural gas imports.

[(2) NATURAL GAS IMPORTS (OTHER THAT LNG).—The provisions of section 203(a)(5) shall apply to the passthrough of the first sale acquisition costs of volumes of natural gas (other than liquefied natural gas) imported into the United States by the interstate pipeline involved during any corresponding period (determined appropriate by the Commission) of calendar year 1977 if, in connection with the granting of any authority under the Natural Gas Act to import such natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the assignment of functions under the Department of Energy Organization Act, determines that the provisions of section 203(a)(5) shall apply with respect to such natural gas imports.

[SEC. 208. ALASKA NATURAL GAS.

[In the case of natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976—

[(1) any portion of the first sale acquisition cost of such natural gas incurred by any interstate pipeline which in not required to be incrementally priced under this title, and

[(2) any amount incurred by any interstate pipeline, for transportation of such natural gas after delivery of such natural gas to such systems,

shall be allocated to the rates and charges of such interstate pipeline in accordance with the general principles applicable on the date of the enactment of this Act for establishing rates in connection with the issuing of certificates under the Natural Gas Act for interstate pipelines.]

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